THE Pleadings and Arguments AND OTHER PROCEEDINGS In the COURT of KINGS-BENCH UPON THE Quo Warranto, TOUCHING THE CHARTER OF THE City of London;

With the JUDGMENT entred thereupon.

The whole Pleadings faithfully taken from the Record.

LONDON,

Printed by the Assigns of *Richard* and *Edward Atkins* Esquires, For *Tho. Dring* and *Benj. Tooke*, and are to be Sold at the *Harrow* at *Chancery Lane* End in *Fleet-Street*, 1690.

Placita Coram Domino Rege apud Weſtm'. De Termino Paſchæ Anno Regni Domini noſtri *Caroli* Secundi Dei gratia *Angliæ*, *Scotiæ*, *Franciæ* & *Hiberniæ* Regis, Fidei Defenſor', &c. triceſimo quarto, Rotulo primo Int' placita Regis.

London' ſſ. *Memorand'*, *Quod* Robertus Sawyer *Miles*, *Attorn' Domini Regis nunc general'*, *qui pro eodem Domino Rege in hac parte ſequitur*, *in propria Perſona ſua ven' hic in Curia dicti Domini Regis coram ipſo Rege apud Weſtm' die Lune prox' poſt quinden' Sancti* Martini *ult' præterit'*, *Et pro eod' Domino Rege protulit hic in Cur' dicti Domini Regis coram ipſo Rege tunc & ibidem quand' Information' verſus Majorem & Communitat' ac Cives Civitat'* London', *Quæ quidem informatio ſequitur in hæc verba. ſſ.*

London' ſſ. MEmorandum, Quod Robertus Sawyer Miles, Attorn Dom̃ Regis nunc Generalis, qui p̃o eodem Dom̃ Rege in hac parte ſequitur, in p̃opria perſona ſua ven hic in Cur' dic' Dom̃ Regis coram ipſo Rege apud Weſtm' die Lune p̃ox' poſt quinden S. Martini iſto eodem Termino, & p̃o eodem Dom̃ Rege dat Cur' hic Intelligi & Infoꝛmari, Quod Maꝑoꝛ & Communitatas ac Cives Civitat London' p̃eđ per ſpacium unius Penſis jam ult elapſ. & amplius uſi fuerunt & adhuc utuntur, ac clamant habere & uti abſque aliquo Warranto ſive Regali Conceſſione infra Civitat London' p̃eđ & Libertat & P̃ꝛecinct' ejuſdem Civitat diverſis Libertat P̃ꝛivileg & Franchel. ſequen' videl' Foꝛe de ſeipſis unum Coꝛpus Coꝛpoꝛat & Politicum in re facto & nomine per nomen Maꝑoꝛis & Communitat ac Civium Civitat London' ac per idem nomen placitare & implacitari, reſpondere & reſponderi, ac etiam habere Vicecomit Civitat & Cõmunitat Civitat London, & nominare & eligere ex ſeipſis duas perſonas foꝛe Vicecomit Civitat p̃eđ & Com̃ ejuſđ Civitat, Ac ill' ſic nominat & elect' p̃eficere & conſtituere Vic Civit p̃eđ & Com̃ ejuſdem Civitat ad Execution & Retoꝛn omnium Bꝛevium, Billarum, & P̃ꝛeceptoꝛum Dom̃ Regis p̃o Adminiſtratione & Executione Juſtic infra Civit p̃eđ & Com̃ ejuſdem Civit exequend faciend ac ad faciend & exequend omnia & ſingula al' infra Civit p̃eđ & Com̃ ejuſdem Civit que ad Officium Vic faciend pertinent. Ac etiam habere Vic Com̃ Middleſex, & nominare, eligere & conſtituere ex ſeipſis Vic Com̃ Middleſex, p̃o eodem Com̃ ut Vicecomes inde deſerviturꝰ ac omnia Bꝛevia, Billas, & p̃ꝛecepta Dom̃ Regis infra Com̃ Middleſex p̃eđ p̃o Adminiſtratione & Executione Juſtic ibid exequend & retoꝛn inde faciend abſque aliqua Commiſſione ſive aliquibus Literis Patentibus a Dom̃ Rege inde obtent ſive obtinend. Ac etiam quod Maꝑoꝛ & Aldermanni ejuſdem Civit fuerunt Juſtic Dom̃ Regis ad pacem infra Civit p̃eđ conſervand ac ad Seſſiones pacis & placita Coꝛone infra eandem Civit tenend ac ad omnes Felon Riot & Conventic illicit infra Civit p̃eđ inquirend audiend & terminand Authoꝛitate iploꝝ p̃oꝑ̃ia, abſque aliqua Commiſſione, ſive al' Authoꝛitate a Dom̃ Rege in ea parte conceſſ. ſive obtent. De quibus quidem omnibus & ſingulis Libertat, Per Jud. Mich. ult' 137.

Privileg & Franches. iidem Major & Commnuitas ac Cives Civit London pred per totum tempus supradictum, super dictum Dom Regem nunc usurpaverunt & adhuc usurpant, in dict' Dom Regis nunc Contempt Prerogative sue Regie grave dampnum & prejudicium. Unde idem Attornat dict' Dom Regis nunc General' pro eodem Dom Rege pet Advisament Cur hic in premiss. & debit Legis Proces. versus Prefat Major & Communitat ac Cives Civit London pred in hac parte fieri ad respondend dict' Dom Regi Quo Warranto clamant habere, uti & gaudere Libertat, Privileg & Franches. supradict', &c. Per quod precept fuit Vicecomitibus London quod Venire Fac eos ad respondend, &c.

Placitum. Et modo scilicet die Lune prox' post Crastinum Assensc Dom isto eodem Termino coram Dom Rege apud Westm' ven predicti Major & Communitas ac Cives Civitatis London per Benedictum Brown Attornat suum & habito auditu Information pred querunt se colore ejusdem Informationis gravit fore vexat & inquietat & hoc minus juste quia protestando quod Informatio pred materiaq in eadem content min suffic in Lege exist' ad quam quidem Informat ipsi necesse non habent nec per Legem Terre tenent aliquo modo respondere Pro placito tamen quoad Libertat, Privileg & Franches. sequen, (viz.) ipsos Major & Communitat ac Cives Civit London fore de seipsis unum corpus Corporat & Politic in re facto & nomine per Nomen Majoris & Communitat ac Civium Civitat London, ac per idem Nomen placitare & implacitari respondere ac responderi in Informat pred superius specificat iidem Major & Communitas ac Cives Civit London dicunt quod dict' Dom Rex nunc ipsos occasione inde impetere seu occasionare non debet quia dicunt quod pred Civit London est & a tempore cujus contrar memoria homin non exist' fuit antiqua Civitas Quodq Cives ejusdem Civit sunt & a pred tempore cujus contrar memor homin non exist' fuerunt un corpus corporat & Politic in re facto & nomine per nomen Majoris & Communitat ac Civium Civit London ac per idem nomen per tot tempus illud placitaver & implacitat fuerunt responder & respons. fuerunt, & placitare & implacitari, respondere ac responderi a toto tempore supradicto usi fuerunt & consuever Quodq in Magna Charta de libertat Angl' in Parliament Domin Henrici quondam Regis Angl' tertii apud Westm' in Comitat Midd' Anno Regni sui nono tent edit & provis. continet quod Civitas London habeat omnes libertat suas antiquas & consuetud suas & iidem Major & Communitas ac Cives Civit London ulterius dicunt quod Domin Edwardus quondam Rex Angl' tertius in Parliamento suo apud Westm' in Comit Midd' Anno Regni sui primo tent per quandam Cartam suam de consensu Prelator Comit Baron ac totius Communitat Regni sui in eodem Parliament suo apud Westm' pred convocat existen ac Authoritat ejusdem Parliament confirmavit tunc Civibus Civit London pred libertat subsequen (int alia) habend sibi & successoribus suis in perpetuum, imprimis recitando, Quod cu in Magna Charta de libertat Angl' contineat quod Civit London habeat omn libertat suas antiquas & consuetud suas; Et quod iidem Cives tempore confection dicte Carte ac temporibus Sancti Edwardi Regis & Confessoris & Willielmi Conquestoris & at Progenitor dict' Regis Edwardi tertij divers. libertat & consuetud tam per Cartas ipsor Progenitor suor quam sine Cartis ex antiqua consuetud habuissent, voluit & concessit idem Rex Edwardus tertius pro se & Heredibus suis per Cartam illam authoritat pred quod iidem Cives haberent libertat suas secund form Magn Carte supradict' & quod pro aliqua personali transgr vel Judicio personal' alicujus Ministri ejusedm Civit non caperent libertat Civit ill' in manus ejusdem Regis Edwardi tertij vel Hered suor sed hujusmodi Minister prout qualitas transgress. requiret puniret prout per eandem Cartam geren dat apud Westm' pred sexto die Martii, Anno Regni dict' Regis Edwardi tertii primo supradict' sub magno sigillo suo Angl' sigillat hic in Cur prolat inter alia plenius apparet. Et iidem Major & Communitas ac Cives Civit London ulterius dicunt quod ad instant & requisit Communitat Regni Angl' in Parliamento Domin Richardi nuper Regis Angl' secundo post Conquest' apud Westm' pred Anno Regni sui septimo tent assemblat

pro

pro majore quiete & pace inſt ligeos eſuldem nuper Regis ſovend & pro bono publico omnes conſuetud Libertat, Privileg & Franch' Civit predict' tunc Civibus Civit illius & eor' ſucceſſor' licet uſi non fuerint vel abuſi fuerint eiſdem Authorit eſuldem Parliament ratificat & confirmat fuer' Quodq; Domin Henricus nuper Rex Angl' ſextus per Literas ſuas Patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' pred viceſimo ſexto die Octobr' Anno Regni ſui viceſimo tertio quas iidem Major & Communitas & Cives Civit London hic in Cur' proferunt pro ſe, Heredibus & Succeſſoribus ſuis confirmavit Majori & Communitat ac Civibus Civit London & ſucceſſor' ſuis omnes & ſingulas ſuas Libertat, Franc & Liberas Conſuetud adeo integras & illeſas ſicut eas unquam aliquo tempore Progenitor eſuldem nuper Regis Henrici ſexti melius, quietius & liber' habuiſſent & tenuiſſent prout per eaſdem Literas Patent inſt alia plenius apparet Quodq; Domin Edwardus nuper Rex Angl' quartus per Literas ſuas Patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' pred Nono die Novembr' Anno Regni ſui ſecundo quas iidem Major & Communitas ac Cives Civit London hic in Cur' proferunt pro ſe & Heredibus ſuis confirmavit Majori & Communitat ac Civibus Civit London & ſucceſſoribus ſuis in perpetu omn & ſingulas ſuas Libertat, Franc & Liberas Conſuetud adeo integr & illeſ. ſicut eas unquam aliquo tempore Progenitor eſuldem nuper Reg Edwardi quarti melius, quietius & liber' habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus per eaſdem Literas ſuas Patent conceſſit eiſdem Majori & Communitat ac Civibus quod licet ipſi vel Predeceſſor' ſui aut Major & Alderman Civit predict' vel Predeceſſor' ſui preantea vel Succeſſor' ſui extunc inposter' aliqua vel aliquibus libertat quietant conceſſ. Ordinat Articulor' ſeu liberat conſuetud aut alior' eiſd literis patent eſuldem nup Regis Edwardi quarti ſeu al' literis ſuis aut Progenitor' ſuor' quondam Reg Angl' eiſdem Majori & Communitat conceſſ. content aliquo caſu emergente plene non uſi vel abuſi fuerint: Voluit tamen idem nuper Rex Edwardus quartus quod propt hoc ipſi Major & Communitat Alderman & Cives ſeu Succeſſores ſui forisfactur' aliquor' premiſſ. incurrerent ſed quod ipſi & eor' Succeſſor' univerſis & ſingulis libertat quietant conceſſ. ordinat Articulis, liberis conſuetud & quibuſcunq; al' in Cartis & Literis predict' content taliter non uſis vel etiam abuſis & eor' quolibet extunc de cetero plene & libere gauderent & eis uterent ſine impetition vel impediment eſuldem nuper Regis ſeu Hered ſuor' Juſtic Eſcaetor' Vicecom aut al' Valliv' ſeu Miniſtr' ipſius nuper Regis vel al' quorumcunq; prout per eaſdem literas patent eſuldem nuper Regis Edwardi quarti hic in Cur' prolat inſt alia plenius apparet. Quodq; Domin Henricus nuper Rex Angl' Septimus per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' predict' viceſimo tertio die Julij Anno Regni ſui Viceſimo, quas iidem Major & Communitas ac Cives Civit London hic in Cur' proferunt pro ſe Heredibus & Succeſſoribus ſuis Ratificavit & Confirmavit Majori & Communitat ac Civibus Civit London & eor' Succeſſor' omnia & ſingula libertat privileg quietant & liberas conſuetud quibus ipſi Major & Communitas & Cives ſeu Predeceſſor' ſui habere, exercere ſeu gaudere conſueviſſent vel uſi fuiſſent aut debuiſſent adeo plene, plan & integre ac ſi ea omnia & ſingula ſeparatim & verbat in eiſdem literis patent expreſſ. declarat & manifeſtat eſſent & fuiſſent, prout per eaſdem literas patent inſt alia plenius apparet. Et iidem Major & Communitas ac Cives Civit London ulterius dicunt quod Domin Jacobus nuper Rex Angl' &c. per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Honorem ſuum de Hampton-Court viceſimo quarto die Septembris Anno Regni ſui Angl' ſexto, quas iidem Major & Communitas ac Cives Civit London hic in Cur' proferunt recitando quod cum quamplurimi Progenitores ipſius nuper Regis quondam Reges Angl' de gratia ſua ſpecial' ac pro gratis laudabil' multiplicib' & contin ſervit per Majorem & Communitat ac Cives Civit London & Predeceſſor' ſuos temporibus retroact' fact' & impenſ. Necnon pro diverſ. al' urgent cauſis & conſideration eos ſeparatim moven dediſſent conceſſiſſent & confirmaſſent Majori & Communitat ac Civibus Civit London

pred & Succeſſor ſuis diverſ. Libertat, Privileg, Franch', Immunitat, Authoritat, Juriſdiction, Ordinat, Conſuetud quietant prout, per ſeparal' Literas Patent Progenitor & Predeceſſor ſuor quondam Regum Angl' plenius & manifeſtius liquebat & apparebat. Idem nuper Rex Jacobus pro & in conſideral ſumme fidelitat cōſtant & prompt & laudabil' ſervic p Major & Communitat ac Cives Civit London predict' eidem nuper Regi in ipius Regn ſui primis Auſpiciis & continue uſq tunc manifeſt' & fideliſſim fact' & impenſ. omnes & ſingulas Literas Patent Cartas & confirmac Preclariſſ. Progenitor & Anceſſor ſuor eiſdem Majori & Communitat ac Civibus Civit London predict' & Predeceſſor ſuis per quecunque nomina incorporat antea tunc tempora fact' conceſſ. ſeu confirmat ac omnes & ſingulas Donac, Conceſſ. Confirmac, Reſtitut, Conſuetud, Ordinac, Explanac, Articul, & omnes al' res quaſcunq in quibuſcunq Literis Patent ſive Cartis quorumcunq Progenitor Predeceſſ. aut Anceſſor ſuor Regum Angl', Necnon omnia & ſingula in dict' Literis Patent, Chartis, Conceſſ. Confirmat, ſeu eor aliquibus content recitat ſpecific confirmat ſeu explanat. Ac omnia & ſingula Juriſdiction, Authoritat, Privileg, Libertat, Franch', Quietanc, Immunitat, Liberas Conſuetud & Hereditament quecunq que pred Major & Communitas ac Cives Civit London predict' vel Predeceſſor ſui per Nomen Major & Communitat ac Civium Civit London ſeu per Nomen Major & Aldermann Civit London ſeu per Nomen Majoris Civium & Communitat Civit London ſeu per Nomen Majoris & Civium Civit London ſeu per Nomen Majoris & Communitat Civit London ſeu per Nomen Civium Civit London ſeu per Nomen Baron London ſeu per Nomen Baron Civit London ſeu per aliquod al' nomen quodcunque ratione ſeu vigore aliquar Literar Patent, Cartar ſeu Confirmac aliquor Progenitor Predeceſſor aut Anteceſſor ejuſdem nuper Regis Jacobi quondam Regis Angl' aliquo tempore vel aliquibus temporibus habuiſſent ſeu rationabilit uſi fuiſſent aut exerciuiſſent rata habuit & grata ac pro ſe Hered & Succeſſor ſuis acceptavit & approbavit ac ea omnia & ſingula prefat Major & Communitat ac Civibus Civit London predict' & eor Succeſſoribus per eaſdem Literas ſuas Patent ratificavit & confirmavit habend tenend gaudend & exercend omnia & ſingula premiſſ. eiſdem Major & Communitat ac Civibus Civit London predict' & Succeſſoribus ſuis in perpetuum adeo plene, libere & integre ac in tam amplis modo & forma ac ſi ſeparatim, ſingulatim & nominatim in Literas Patent ill' expreſſ. nominat declarat recitat & manifeſt' eſſent & fuiſſent, prout per eaſdem Literas Patent inter alia plenius apparet. Quodque Domin Carolus primus nuper Rex Angl' &c. per Literas ſuas Patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' predict' decimo octavo die Octobris Anno Regni ſui quartodecimo, quas iidem Major & Communitas ac Cives Civit London hic in Cur proferunt omnia & ſingula Privileg, Libertat, Franc, Quietanc, Immunitat, & Liberas Conſuetud quecunq que predict' Major & Communitas ac Cives Civit London pred vel Predeceſſor ſui per Nomen Majoris & Communitat ac Civium Civit London ſeu per Nomen Majoris & Aldermann Civium & Communitat London ſeu per Nomen Majoris & Civium Civit London ſeu per Nomen Majoris & Communitat Civit London ſeu per Nomen Civium Civit London ſeu per Nomen Baron London ſeu per Nomen Baron Civit London ſeu per aliquod al' nomen quodcunq ratione ſeu vigore Literar Patent Cartar ſeu confirmac in eiſdem Literis Patent dicti nuper Regis Caroli primi mentionat vel uſu vel preſcriptione aut alio legal' modo aliquo tempore vel aliquibus temporibus ante tunc habuiſſent ſeu rationabiliter uſi fuiſſent aut exercuiſſent rat habend & grata ac pro ſe heredibus & Succeſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula prefat Majori & Communitat ac Civibus Civit London & eor Succeſſor per eaſdem Literas ſuas Patent ratificavit & confirmavit, prout per Literas Patent ill' ut alia plenius liquet & apparet. Quodque pred Domin Rex nunc per Literas ſuas Patent ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' pred viceſimo quarto die Junij Anno Regni ſui decimo quinto, quas iidem Major & Communitas ac Cives Civit London hic in Cur proferunt pro ipſo Rege, Here-

Heredibus & Succeſſoribus ſuis ratificavit & confirmavit Major' & Communitat' ac Civibus Civit' London & Succeſſor' ſuis omnia & ſingula Juriſdiction', Authoritat', Privileg', Libertat', Franch', Quietanc', Immunitat' & Conſuetud' quecunq; que prefat' Major & Communitas ac Cives Civit' London vel Predeceſſor' ſui per Nomen Major' & Communitat' ac Civium Civit' London ſeu per Nomen Majoris Aldermannor' Civium & Communitat' London ſeu per Nomen Majoris & Civium Civit' London ſeu per Nomen Major' & Communit' Civit' London ſeu per Nomen Civium Civit' London, ſeu per Nomen Baron' London, ſeu per Nomen Baron' Civitat' London, ſeu per aliquod al' Nomen quodcunq; ratione vel vigore Literar' Patent' cartar' ſeu confirmat' in eiſdem Literis Patent' dicti Domin' Regis nunc prementionat' vel alicujus ſeu aliquor' uſus vel uſu preſcription' vel preſcriptionum ſeu al' legali modo quocunq; aliquo tempore vel aliquibus temporibus ante tunc habuiſſent ſeu rationabilit' uſi fuiſſent, ſeu exercuiſſent habend' tenend' gaudend' & exercend' omnia & ſingula premiſſ. predict' eiſdem Majori & Communitat' ac Civibus Civitat' London predict' & Succeſſoribus ſuis imperpetuum adeo plene libere & integre ac in tam amplis modo & forma prout in eiſdem Literis Patent' ſuperius mentionat' fore data ſive conceſſa aut alit' uſu preſcription' vel al' legali modo ſeu jure quocunq; ante tunc reſpective habit' obtent' ſive gaviſa fuiſſent ac ſi ſeparatim ſingulatim & nominatim in & per dictas Literas Patent' ipſius Domin' Regis nunc expreſſ. nominat' declarat' conceſſ. & manifeſta eſſent & fuiſſent prout per eaſdem Literas Patent' inter alia plenius apperet. Et eo Warranto iidem Major & Communitat' ac Cives Civitat' London per tempus in Informatione predicta ſuperius ſpecific' uſi fuer' & adhuc utunt' ac clamant habere & uti Libertat', Privileg' & Franch' fore de ſeipſis unum Corpus Corporat' & Politic' in re facto & Nomine per Nomen Majoris & Communitat' ac Civium Civitat' London, ac per idem Nomen placitare & implacitari, reſpondere ac reſponderi prout eis bene licuit & licet. Abſq; hoc quod iidem Major & Communitas ac Cives Civitat' London de Libertat', Privileg' & Franch' ill' ſuper dictum Domin' Regem nunc per tempus pred' in Informatione pred' ſuperius ſpecific' Uſurpaver' ſeu Uſurpant prout per Information' ill' pro dicto Domin' Rege nunc ſuperius ſupponitur. Que omnia & ſingula iidem Major ac Communitas ac Cives Civitat' London parat' ſunt verificare, unde petit Judicium; Et quod Libertat', Privileg' & Franch' ill' eis & Succeſſoribus ſuis in perpetuum deinceps allocent' & adjudicent' & quod ipſi quoad premiſſ. ill' ab hac Cur' dimittant' &c. Et iidem Major & Communitas ac Cives Civit' London, quoad Libertat', Privileg' & Franch' ſequen' viz. ipſos habere Vicecom' Civit' & Com' Civit' London & Vicecom' Midd' & nominare & eligere ex ſeipſis duas perſonas fore Vicecom' Civit' pred' & Com' ejuſdem Civit' & Vicecom' Midd' ac ill' ſic nominat' & Electi' preficere & conſtituere Vicecom' Civit' pred' & Com' ejuſdem Civit' & Vicecom' Midd' ac ut Vicecom' Civit' predict' & Com' ejuſdem Civit' ad execut' & Retorn' omnium Brevium Bill' & Precept' Domin' Regis pro Adminiſtratione & execut' Juſtic' infra Civit' predict' & Com' ejuſdem Civit' exequend' facien' que ad Officium Vicecom' facien' pertinent ac ad facien' & exequend' omnia & ſingula alia infra Civit' predict' & Com' ejuſdem Civit' que ad Officium Vicecom' facien' pertinent, ac ut Vicecom' Com' Midd' pro eodem Com' deſerviturr' ac omnia Brevia, Bill' & Precept' Domin' Regis infra Com' Midd' predict' pro Adminiſtratione & Executione Juſticie ibidem exequend' & retorn' inde facien' que ad Officium Vicecom' facien' pertinen': Dicunt quod Dictus Domin' Rex nunc ipſos Majorem & Communitat' ac Cives Civitat' London occaſione inde impetere ſeu occaſionare non debet, quia dicunt quod predict' Civit' London eſt & a tempore cujus contrar' memoria homin' non exiſt' fuit antiqua Civitas & antiq' Comit' de ſe Quodq; pred' Com' Midd' per totum tempus pred' fuit & eſt antiquus Comit' Quodq; Cives ejuſdem Civit' ſunt & a pred' tempore cujus contrar' memor' homin' non exiſt' fuer' un' corpus corporat' & politic' tam per Nomen Major' & Communitat' ac Civium Civit' London quam per Nomen Civium London Quodq; Domin' Johannes quondam Rex Angl' per litteras ſuas patent' ſub

magno

magno sigillo suo Angl' sigillat' gerend' dat' apud bonam Villam super Tokam, quinto die Julij, Anno Regni sui primo, quas iidem Major & Communitat' ac Cives Civitat' London hic in Cur' protulerunt, concessit Civibus London pred' Vicecomit' London & de Midd' cum omnibus rebus & consuetudinibus que pertinebant ad pred' Vicecom' infra Civit' & extra, per terras & per aquas habend' & tenend' eis in perpetuum. Et preterea idem Dom'n's Rex Johannes per literas suas patent' pred' concessit eisdem Civibus London quod ipsi de seipsis facerent Vicecom' quoscunq; voluerint & amoverent quando voluerint prout per easdem literas patent' inter alia plenius apparet. Quodq; in Magna Charta de libertatibus Angl' in Parliament' Dom'n's Henrici quondam Regis Angl' tertii apud Westm' in Com' Midd' Anno Regni sui nono tent' edit' & provis. continet' quod Civit' London habeat omnes libertat' suas antiquas & consuetud' suas. Et iidem Major & Communitas, ac Cives Civit' London ulterius dicunt quod idem Dom'n's Rex Henricus tertius per literas suas patent' sub magno sigillo suo Angl' sigillat' gerend' dat' apud Westm' pred' decimo octavo die Februarij Anno Regni sui undecimo quas iidem Major & Communitas ac Cives Civit' London hic in Cur' protulerunt, confirmavit Civibus London Vicecom' London & de Midd' cum omnibus rebus & consuetudinib' que pertineb' ad pred' Vicecom' infra Civitat' & extra, per terras & per aquas prout per easdem literas patent' int' al' plenius apparet. Quodq; Dom'n's Edwardus quondam Rex Angl' tertius in Parliament' suo apud Westm' in Com' Midd' Anno Regni sui primo tent' per quandam Cartam suam de assensu Prelator' Comit' Baron' ac totius Communitat' Regni sui in eodem Parliamento suo apud Westm' pred' convocat' existen' ac Authoritate ejusdem Parliamenti confirmavit tunc Civibus Civit' London pred' libertat' subsequen' int' al' habend' sibi & Successoribus suis in perpetuum. Imprimis recitando quod cum in Magna Charta de libertat' Angl' contineat' quod Civitas London habeat omnes libertat' suas antiquas & consuetud' suas. Et quod iidem Cives tempore confection' dicte Carte ac temporibus sancti Edwardi Regis & Confessoris, & Willielmi Conquestor' & al' Progenitor' dicti Regis Edwardi tertii diversas libertat' & consuetud' tam per Cartas ipsor' Progenitor' suor' quam sine Cartis ex antiqua consuetud' habuissent, voluit & concessit idem Rex Edwardus tertius pro se & Heredibus suis per Cartam ill' Authoritat' pred' quod iidem Cives haberent Libertat' suas secund' formam Magn' Carte supradict'. Et quod pro aliqua personal' transgr' vel Judicio Personal' alicujus Ministri ejusdem Civit' non caperet' libertas Civit' ill' in manu ejusdem Regis Edwardi tertii vel Hered' suor' sed hujusmodi Minister prout qualitas transgr' requireret puniretur prout per eandem Cartam gerend' dat' apud Westm' pred' sexto die Martij Anno Regni dicti Regis Edwardi tertii primo supradict' sub magno sigillo suo Angl' sigillat' hic in Cur' prolat' int' alia plenius apparet. Et iidem Major & Communitas ac Cives Civit' London ulterius dicunt quod ad Instant' & requisition' Communitat' Regni Angl' in Parliamento Dom'n's Richardi nuper Regis Angl' Secundi post Conquestum apud Westm' pred' Anno Regni sui septimo tent' assemblat' pro majore quiet' & pace inter ligeos ejusdem nuper Regis fovend' & pro bono publico omnes Consuetud', Libertat', Privileg' & Franch' Civit' pred' tunc Civibus Civitat' illius & eor' Successoribus, licet usi non fuerint vel abusi fuerint eisdem Authoritat' ejusdem Parliament' ratificat' & confirmat' fuer'. Quodq; Dominus Henricus nuper Rex Angl' sextus per literas suas patent' sub magno sigillo suo Angl' sigillat' gerend' dat' apud Westm' pred' vicesimo sexto die Octobris, Anno Regni sui vicesimo tertio quas iidem Major & Communitas ac Cives Civit' London hic in Cur' protulerunt pro se Heredibus & Successoribus suis confirmavit Majori & Communitat' ac Civibus Civit' London & Successoribus suis omnes & singulas suas Libertat', Franch' & Liberas Consuetud' adeo integras & illesas sicut eas unquam aliquo tempore Progenitor' ejusdem nuper Regis Henrici sexti melius, quietius & liber' habuissent & tenuissent prout per easdem literas patent' int' al' plenius apparet. Quodq; Dom'n's Edwardus nuper Rex Angl' quartus per literas suas patent' sub magno sigillo suo Angl' sigillat' gerend' dat' apud Westm' pred' nono die Novembr' Anno Regni sui secundo quas iidem Major & Communitas ac Cives Civit' London hic in Cur' protulerunt pro se & Pere-

Heredibus ſuis confirmavit Majori & Communitat ac Civibus Civit London & Succeſſoribus ſuis in perpetuum omnes & ſingulas ſuas libertat franch' & liberas conſuetud adeo integr & illeſ. ſicut eas unquam aliquo tempore Progenitor' ejuſdem nuper Regis Edwardi quarti melius, quietius & liber habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus per eaſdem literas ſuas patent conceſſit eiſdem Majori & Communitat ac Civibus, quod licet ipſi vel Predeceſſores ſui aut Major & Aldermann Civit pred vel Predeceſſor ſui preantea vel Succeſſores ſui extunc impoſterum aliqua vel aliquibus libertat quietant conceſſ. Ordination Articulor ſeu liberar conſuetudin aut alior in eiſdem literis patentibus ejuſdem nuper Regis Edwardi quarti ſeu al' literis ſuis aut Progenitor ſuor quondam Regum Angl' eiſdem Majori & Communitat conceſſ. content aliquo caſu emergente plene non uſi vel abuſi fuerint. Voluit tamen idem nuper Rex Edwardus quartus quod propt hoc ipſi Major & Communitas Aldermann & Cives ſeu Succeſſor ſui forisfactur aliquor premiſſor incurrent ſed quod ipſi & eorum Succeſſor Univerſis & ſingulis libertat quietant conceſſ. ordinat Articulis Liberis conſuetud & quibuſcunq al in Cartis & literis pred content talit non uſis vel etiam abuſis, & eor quolibet extunc de cetero plene & libere gauderent & eis uterent ſine impetratione vel impedimento ejuſdem nuper Regis ſeu Hered ſuor Juſtic Eſcaetor Vicecom aut al Ballivi ſeu Miniſtr ipſius nuper Regis vel alior quorumcunq prout per eaſdem literas patent ejuſdem nuper Regis Edwardi quarti hic in Cur Prolat int al plenius apparet. Quodq Dom Henricus nuper Rex Angl' Septimus per literas ſuas patent ſub magno ſigillo ſuo Angl' Sigillat gerent dat apud Weſtm' pred viceſimo tertio die Julij Anno Regni ſui viceſimo, quas iidem Major & Communitas ac Cives Civit London hic in Cur proferunt pro ſe Heredib & Succeſſoribus ſuis ratificavit & confirmavit Major & Communitat ac Civibus Civit London, & eorum Succeſſoribus omnia & ſingula libertat privileg quietant & liberas conſuetudines quibus ipſi Major Communitas & Cives ſeu Predeceſſor ſui habere, exercere ſeu gaudere conſuevi ſſent vel uſi fuiſſent aut debuiſſent adeo plene, plane & integre ac ſi ea omnia & ſingula ſeparatim & verbatim in eiſdem literis patent exprell. declarat & manifeſtat eſſent & fuiſſent prout per eaſdem literas patent inter alia plenius apparet. Quodq Dom Henricus nuper Rex Angl' octavus per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerent dat apud Weſtm' pred duodecimo die Julij Anno Regni ſui quinto, quas iidem Major & Communitas ac Cives Civit London hic in Cur proferunt omnes conceſſiones & at, quecunq in pred literis patent pred Dom Regis Johannis ſuperius ſpecificat content pro ipſo Rege Henrico octavo & Heredibus ſuis, Majori & Communitat ac Civibus Civitat London & Succeſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent ejuſdem nuper Regis Henrici octavi inter alia plenius apparet. Quodq Dom Edwardus nuper Rex Angl' ſextus per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerent dat apud Weſtm' pred viceſimo primo die Februarij Anno Regni ſui ſecundo, quas iidem Major & Communitas ac Cives Civit London pred hic in Cur proferunt omnes conceſſion & at quecunq in pred literis patent dicti Dom Regis Johannis ſuperius ſpecificat content pro ipſo nuper Rege Edwardo ſexto & Heredibus ſuis, Major & Communitat ac Civibus Civit London pred & Succeſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent ejuſdem nuper Regis Edwardi ſexti, inter alia plenius apparet. Quodq Dom Maria nuper Regina Angl' per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerent dat apud Weſtm' pred primo die Martij, Anno Regni ſui primo quas iidem Major & Communitas ac Cives Civitat London hic in Cur proferunt pro ipſa nuper Regina Hered & Succeſſoribus ſuis omnes conceſſiones & at quecunq in pred literis patent dicti Dom Regis Johannis ſuperius ſpecificat content Majori & Communitat ac Civibus Civitat London pred & Succeſſor ſuis ratificavit & confirmavit prout per eaſdem literas patent ejuſdem nuper Regine int al plenius apparet. Quodq Domina Elizabetha nuper Regin Angl' per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat gerent dat apud Weſtm' pred nono die Maij, Anno Regni ſui quarto, quas iidem Major & Communitas ac Cives Civitat London hic in Cur proferunt pro ipſa nuper

Regina

Regina Elizabetha Hered & Succeſſoribus ſuis omnes conceſſion & al' quecunque in pred literis patent dicti Dom Regis Johann' ſuperius ſpecificat content Majori & Communitat ac Civibus Civit London & Succeſſoribus ſuis ratificavit & confirmavit, prout per ealdem literas patent ejuſdem nuper Regine Elizabeth' inter alia plenius apparet. Et iidem Major & Communitas ac Cives Civitat London ulterius dicunt, quod Dom Jacobus nuper Rex Angl' per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Honorem ſuum de Hampton-Court viceſimo quarto die Septembris Anno Regni ſui Angl' ſexto quas iidem Major & Communitas ac Cives Civitat London hic in Cur' proferunt recitando, quod cum quamplurim Progenitor' ipſius nuper Regis quondam Reges Angl' de gratia ſua ſpeciali ac p gratis laudabil' multiplicibus & continuis ſervitiis per Majorem & Communitat ac Cives Civitat London & Predeceſſores ſuos temporibus retroactis fact' & impenſ. necnon pro diverſis al' urgentibus cauſis & conſiderationibus eos ſeperatim moventibus dediſſent conceſſiſſent & confirmaſſent Majori & Communitati ac Civibus Civitat London pred ac Succeſſoribus ſuis diverſa Libertat, Privileg, Franc, Immunitat, Authoritat, Juriſdiction, Ordinanc, conſuetudin & quietantias prout per ſeperat literas patent Progenitor & Predeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat idem nuper Rex Jacobus pro & in conſideratione ſumme fidelitat conſtant prompt & laudabil' ſervitii per Majorem & Communitat ac Cives Civitat London predict' eidem nuper Regi in ipſis Regni ſui primis Aulpitiis & continue uſque tunc manifeſtat & fideliſſim fact' & impenſ. omnes & ſingulas literas patentes cartas & confirmation Preclariſſimor' Progenitor & Anteceſſor' ſuor' eiſdem Majori & Communitat ac Civibus Civitat London predict' & Predeceſſoribus ſuis per quecunq nomina incorporat ante tunc tempora fact' conceſſ. ſeu confirmat ac omnes & ſingulas donationes, conceſſiones, confirmation, reſtitution, conſuetudines, ordinationes & Explanationes, Articul, & omnes al' res quaſcunq in quibuſcunq literis patentibus ſive chartis quorumcunq Progenitor', Predeceſſor' aut Anteceſſor' ſuor' Regum Angl' nec non omnia & ſingula in dictis literis patentibus chartis, conceſſionibus, confirmationibus ſeu eor' aliquibus content, recitat ſpecificat confirmat ſeu explanat ac omnia & ſingula Juriſdictiones, Authoritates, Privilegia, Libertates & Franchel. Quietant, Immunitates, liberas conſuetudines & Hereditament quecunq que pred Major & Communitat ac Cives Civitat London pred vel Predeceſſor' ſui per nomen Majoris & Communitat ac Civium Civitat London ſeu per nomen Majoris & Aldermann Civitat London ſeu per nomen Majoris Civium & Communitat Civitat London ſeu per nomen Majoris & Civium Civitat London ſeu per nomen Major' & Communitat Civitat London ſeu per nomen Civium Civitat London ſeu per nomen Baron London ſeu p nomen Baron Civitat London ſeu per aliquod aliud nomen quodcunq ratione ſeu vigore aliquar' literar' patent chartar' ſeu confirmation aliquor' Progenitor' Predeceſſor' aut Anteceſſor' ejuſdem nuper Regis Jacobi quondam Regum Angl' aliquo tempore vel aliquibus temporibus habuiſſent ſeu rationabilit uſi fuiſſent aut exercuiſſent rata habuit & grata ac pro ſe Heredibus & Succeſſoribus ſuis acceptavit & approbavit ac ea omnia & ſingula prefat Majori & Communitat ac Civibus Civitat London predict' & eor' Succeſſoribus per ealdem literas ſuas patent ratificavit & confirmavit habend & tenend gaudend & exercend omnia & ſingula premiſſa eiſdem Majori & Communitat ac Civibus Civitat London predict' & Succeſſoribus ſuis imperpetuum adeo plene libere & integre ac in tam amplis modo & forma ac ſi ſeparatim ſingulatim & nominatim in literis patentibus ill' expreſſ. nominat declarat recitat & manifeſtat eſſent & fuiſſent prout per ealdem literas patentes inter alia plenius apparet. Quodq Dominus Carolus primus nuper Rex Angl', &c. per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat gerend dat apud Weſtm' pred decimo octavo die Octobris Anno Regni ſui quartodecimo quas iidem Major & Communitas ac Cives Civitat London hic in Cur' proferunt omnia & ſingula privilegia libertat franch' quietant immunitates & liberas conſuetudines quecunq que pred Major & Communitat ac Cives Civitat London pred vel Predeceſſor' ſui per nomen Majoris & Communitat ac Civium Civitat

vitat London ſeu per nomen Majoris & Alderman Civium & Communitat London ſeu per nomen Majoris & Civium Civitat London ſeu per nomen Majoris & Communitatis Civitat London ſeu per nomen Civium Civitat London ſeu per nomen Baron London ſeu per nomen Baron Civitat London ſeu per aliquod aliud nomen quodcunq; ratione ſeu vigore præd literar' patent præd Dom Regis Johannis aut aliar' literar' patent chartarum ſeu confirmation in eiſdem literis patentibus dicti nuper Regis Caroli primi mentionat vel uſu vel preſcription aut alio legali modo aliquo tempore vel aliquibus temporibus ante tunc habuiſſent ſeu rationabilit uſi fuiſſent aut exercuiſſent rata habens & grata ea pro ſe Heredibus & Succeſſoribus ſuis acceptavit & approbavit ac ea omnia & ſingula præfat Majori & Communitati ac Civibus London & eor' ſucceſſoribus per eaſdem literas ſuas patentes ratificavit & confirmavit prout per literas patent illas inter alia plenius apparet Quodq; predictus Dominus Rex nunc per literas ſuas patent ſub magno ſigillo ſuo Angl' ſigillat geren dat apud Weſtm' predict' viceſimo quarto die Junij Anno Regni ſui decimo quinto quas iidem Major & Communitas ac Cives Civitat London hic in Cur' profe-runt pro ipſo Rege Heredibus & Succeſſoribus ſuis ratificavit & confirmavit Majori & Communitati ac Civibus Civitat London & ſucceſſoribus ſuis omnia & ſingula Juriſdiction, Authoritat, Privilegia, Libertates, Franch', Quietant, Immunitates & Conſuetudin quecunq; que præfat Major & Communitas ac Cives Civitat London vel predeceſſores ſui per nomen Majoris & Communitat ac Civium Civitatis London ſeu per nomen Majoris Aldermannor' Civium & Communitat London ſeu per nomen Majoris & Civium Civitatis London ſeu per nomen Major & Communitat Civit London ſeu per nomen Civium Civitat London ſeu per nomen Baron London ſeu per nomen Baron Civitat London ſeu per aliquod aliud nomen quodcunq; rationc vel vigore præd literar' patent præd Dom Regis Johannis aut aliarum literar' patent chartar' ſeu confirmation in eiſdem literis patentibus dicti Dom Regis nunc præmentionat vel alicujus ſeu aliquor' uſus vel uſuum preſcription vel preſcription ſeu alio legali modo quocunq; aliquo tempore vel aliquibus temporibus antetunc habuiſſent ſeu rationabilit uſi fuiſſent aut exercuiſſent habend tenend gaudend & exercend omnia & ſingula premiſſa præd eiſdem Majori & Communitat ac Civibus Civitat London præd & Succeſſoribus ſuis imperpetuum adeo plene libere & integre ac in tam amplis modo & forma prout, in eiſdem literis patentibus ſuperius mentionat forte data ſive conceſſa aut alit uſu preſcription vel alio legali modo ſeu jure quocunq; ante tunc reſpective habit obtent ſive gavila fuiſſent ac ſi ſeparatim ſingulatim & nominatim in & per dictas literas patentes ipſius Dom Regis nunc expreſſ. nominat declarat conceſſa & manifeſta eſſent & fuiſſent prout per eaſdem literas patent (inter alia) plenius apparet.

Et iidem Major & Communitas ac Cives Civitat London ulterius dicunt quod a tempore confection præd literar' patent præd quondam Regis Johannis huculq; iidem Major & Communitas ac Cives Civitat London habuer' Vicecom Civit & Com Civit London & Vicecom Comitat Midd' & quolibet anno nominaverunt & elegerunt ex ſeipſis duas perſonas Cives ejuſdem Civitat forte Vicecom Civitat præd & Com ejuſdem Civitat & Vicecom Com Midd' ac ill ſic nominat & elect' preſecerunt & conſtituerunt Vicecom Civitat præd & Com ejuſdem Civitat & Vicecom Com Midd' ac ut Vicecom Civitat præd & Com ejuſdem Civitat ad execut & retorn omnii Brevii Billar & Preceptor Dom Regis pro adminiſtratione & executione Juſtitie infra Civit præd & Com ejuſd Civitat exequend & facien que ad Officium Vicecom facien pertinent ac ad facien & exequend omnia & ſingula alia infra Civitat præd & Com ejuſdem Civitat que ad Offic Vicecom facien pertinent ac ut Vicecom Midd' pro eodem Com deſervitur ac omnia Brevia Billas & preſcripta Dom Regis infra Com Midd' præd pro Adminiſtratione & Executione Juſtitie ibidem exequend & retorn inde facien que ad Officin Vicecom facien pertinent. Et eo Warranto iidem Major & Communitas ac Cives Civitat London per tempus in Informatione predicta ſuperius ſpecificat uſi fuer & adhuc utunt ac clamant habere & uti libertat privileg & franch' habere Vicecom Civit & Com Civit London & Vicecom Comitat Midd' & nominare & eligere ex

ſeipſis duas perſon̄ fore Vicecom̄ Civitat̄ pred̄ & Com̄ eſuldem Civit̄ & Vicecom̄ Midd' ac ill̄ ſic nominat̄ & elect' preficere & conſtituere Vicecom̄ Civit̄ pred̄ & Com̄ ejuſdem Civitat̄ & Vicecom̄ Midd' ac ut Vicecom̄ Civitat̄ pred̄ & Com̄ ejuſdem Civitat̄ ad execut̄ & retorn̄ omn̄ Brevium Billar' & preceptor' Dom̄ Regis pro Adminiſtratione & Executione Juſtitie infra Civit̄ pred̄ & Com̄ ejuſdem Civit̄ exequend̄ & faciend̄ que ad Officiū Vicecom̄ faciend̄ pertinent ac ad faciend̄ & exequend̄ omnia & ſingula alia infra Civitat̄ pred̄ & Com̄ ejuſdem Civitat̄ que ad Offic̄ Vicecom̄ faciend̄ pertinent ac ut Vicecom̄ Midd' pro eodem Com̄ Midd' deſervitur' ac omnia Brevia Billas & Precepta Dom̄ Reg̃ infra Com̄ Midd' pred̄ pro Adminiſtratione & Executione Juſticie ibidem exequend̄ & retorn̄ inde faciend̄ que ad Officiū Vicecom̄ faciend̄ pertinent prout eis bene licuit & licet.

Abſque hoc quod iidem Major & Communit̄ ac Cives Civitat̄ London de libertat̄ privileg̃ & franch' ill̄ ſuper dict̄ Dom̄ Regem nunc per tempus pred̄ in Informatione predicta ſuperius ſpecificat̄ uſurpaver' ſeu uſurpant̄ prout per Inform̄ illam pro dicto Dom̄ Rege nunc ſuperius ſupponitur que omnia & ſingula iidem Major' & Communitas ac Cives Civit̄ London parati ſunt verificare unde petunt Judicium & quod libertat̄ privileg̃ & franch' ill̄ eis & ſucceſſoribus ſuis in perpetuū defenceps allocent̄ & adjudicentur ac quod ipſi quoad premiſſa ill̄ ab hac Cur' dimittantur, &c.

Et iidem Major & Communitas & Cives Civit̄ London quoad libertat̄ privileg̃ & franch' ſequend̄, viz. Major' dicte Civitat̄ & hujuſmodi Aldermann̄ ejuſdem Civit̄ qui Officiū Majorat̄ Civit̄ illius ſuſtinuer' ac inde fuer' dimiſſi ac tres Senior' Aldermann̄ Civit̄ pred̄ qui diutius in Officiū Aldermanat̄ Civit̄ pred̄ ſteter' & onus & Officiū Majorat̄ Civit̄ pred̄ non ſuſtinuer' fore Juſtic' Dom̄ Regis ad Pacem infra Civitat̄ pred̄ conſervand̄ ac ad Seſſion̄ Pacis & Placita Coron̄ ſcilicet talia Placit̄ Corone quat Juſtic' Dom̄ Regis ad Pacem Conſervand̄ Alligiū ligittim̄ tenere poſſent inf. eandem Civit̄ tenend̄ ac ad omnes Felon̄ Riot̄ Rout̄ & Conventicul̄ illicit̄ infra Civit̄ pred̄ inquirend̄ audiend̄ & terminand̄ in Informatione pred̄ ſuperius ſpecificat̄ dic' quod dict' Dom̄ Rex nunc ipſos Majorem & Communitat̄ ac Cives Civitat̄ London occaſione inde impetere ſeu occaſionare non debet quia dicunt quod pred̄ Civit̄ London eſt & a tempore cujus contrar' memor' homin̄ non exiſtit fuit antiqua Civitas ac antiquus Comitat̄ de ſe ac Cives ejuſdem Civit̄ ſunt & a predicto tempore cujus contrar' memor' homin̄ non exiſtit fuer' Unū corpus corporat̄ & politic̄ in re facto & nomine per nomen Majoris & Communitat̄ ac Civium Civitat̄ London. Quodq; Dom̄ Carolus primus nuper Rex Angl' per literas ſuas patent̄ ſub magno ſigillo ſuo Angl' ſigillat̄ gerend̄ dat̄ apud Weſtm' pred̄ decimo octavo die Octobris Anno Regni ſui quarto decimo quas iidem Major & Communitas ac Cives Civit̄ London hic in Cur' proferunt pro ipſo nuper Rege Heredē & Succeſſoribꝫ ſuis conceſſit Majori & Communitat̄ ac Civibus Civit̄ London & eorū Succeſſoribus, Quod Major & Recordat̄ Civit̄ pred̄ qui tunc fuer' ac Majores & Recordator' Civit̄ pred̄ qui pro tempore fuerent ac tam ill̄ Aldermann̄ qui Major' Civitat̄ illius preantea extitiſſent quam ill̄ Aldermann̄ qui onus & Officiū Majorat̄ Civitat̄ predict' tunc in poſterū ſuſtinuerent & gererent licet a Majorat̄ ill̄ ceſſarent aut inde eſſent dimiſſi quamdiu Aldermann̄ ibidem ſtarent & tres Seniores Aldermann̄ Civit̄ pro tempore exiſtent̄ qui diutius in Officiū Aldermannat̄ ſteter' & ante tunc onus & Officiū Majorat̄ Civitat̄ illius non ſuſtinuer' imperpetuū forent Cuſtodes & quilibet eor' eſſet Cuſtos Pacis ejuſdem nuper Regis Heredē & Succeſſor' ſuorum inf. Civitat̄ London pred̄ & libertat̄ ejuſdem conſervand̄ & cuſtodiend̄ ac eoſdem Majorem & Recordator' ac Aldermann̄ pred̄ ad omnia & ſingula Statuta & Ordinationes pro bono Pacis dicti nuper Regis Heredē & Succeſſorum ſuor' ac pro conſervatione ejuſdem ac pro quiet̄ Regimine & Gubernatione populi ipſius nuper Regis Heredē & Succeſſor' ſuor' edit̄ & edend̄ in omnib' ſuis Artic̄ tam infra Civitat̄ pred̄ quam libertat̄ ejuſdem juxta vim formam & effectū eorundem cuſtodiend̄ & cuſtodire faciend̄ ac ad omnes illos quos juxta formā & effectū Ordination̄ & Statutor' eorundem & eorū alicujus in Civitat̄ predict' & libertat̄ ejuſdem Delinquentes invenirent caſtigand̄ & puniend̄ prout ſecundum formam

Ordi-

Ordination' & Statutor' ill' forer faciend', Et ad omnes illos qui alicui vel aliquibus de populo ejuſdem nuper Regis Hered' vel Succeſſor' ſuor' de Corporibus ſuis vel de incendio Domor' ſuar' minas facerent ad ſufficien' ſecuritat' de Pace vel Bono Geſtu ſuo erga ipſum nuper Regem Heredes & Succeſſores ſuos & cunctum populum ejus Heredes vel Succeſſor' ſuor' invenirend', Et ſi hujuſmodi ſecuritat' invenire recuſarent tunc eos in Gaola ejuſdem Domin' Regis de Newgate vel in aliqua al' priſona Heredes vel Succeſſor' ſuor' in pred' Civit' London quouſq; hujuſmodi ſecuritat' invenirent ſalvo cuſtodiri faciend' Cuſtodes & Juſticiar' ipſius nuper Regis & quemlibet eorum cuſtodem & Juſticiar' ejus Heredes & Succeſſor' ſuor' infra Civit' London pred' & libertat' ejuſdem idem nuper Rex Carolus primus pro ſe Heredibus & Succeſſoribus ſuis conſtituit fecit & Ordinavit per literas patentes ſuas pred' ac ad omnia & ſingula alia exequend' & peragend' que Juſtic' & cuſtod' Pacis ejus Heredes vel Succeſſor' ſuor' inf. aliquem Com' Regni ſui Angl' exequi ſive peragere valerent poſſent aut deberent virtute aliquor' Statutor' & Ordination' hujus Regni ſui Angl' aut virtute commiſſionis ejus Heredes & Succeſſor' ſuor' ad Pacem in aliquo hujuſmodi Com' conſervand' voluit etiam idem nuper Rex Carolus primus ac per eaſdem literas patentes pro ſe Heredibus & Succeſſoribus ſuis conceſſit pred' Majori & Communitati ac Civibus Civitat' London & eorum Succeſſor' quod Major Recordator Civit' pred' pro tempore exiſtent' & hujuſmodi ut prefert' Aldermann' pro tempore exiſtent' qui Officium vel locum Majoratus Civit' illius antea ſuſtinuer' & exercuer' & tres hujuſmodi ut preferr' Seniores Aldermann' pro tempore exiſtent' qui locum Majoratus predict' non ſuſtinuer' vel quatuor eorundem Major' Recordator' & Aldermannorum quorum dict' Major vel Recordator pro tempore exiſtent' unus eſſe voluit forent Juſticiar' ipſius nuper Regis Heredes & Succeſſor' ſuor' & ipſos Juſticiar' ſuos Heredes & Succeſſor' ſuor' pro ſe Heredibus & Succeſſor' ſuis imperpetuum aſſignavit ad inquirend' quotiens & quando eis melius videret expedire per Sacramentum probor' & legalium homin' tam de Civitat' pred' quam de libertat' ejuſdem per quos rei veritas melius ſciri poſſet de omnibus Murdris Felon' Veneficiis Incantation' Scortileg' Arte Magica Tranſgr' Foreſtallar' Regretar' Ingroſſar' & Extortionibus quibuſcunq; ac de omnibus & ſingulis al' Malefactis & Offenſ. de quibus Juſticiar' Pacis ipſius nuper Regis Heredes & Succeſſor' ſuor' legitime inquirere poſſent aut deberent per quoſcunq; & qualitercunq; infra Civit' pred' ſeu libertat' ejuſdem antetunc habit' ſeu perpetrat' vel que extunc ibidem fieri vel attemptari contingerent & tam de omnibus ill' qui in Civitat' pred' & Libertat' ejuſdem in Conventiculis contra Pacem ipſius nuper Regis Heredes & Succeſſor' ſuor' in perturbatione populi ſui Heredes & Succeſſor' ſuor' ſeu vi armata irent vel equitarent ſeu extunc ire vel equitare preſumerent. Et etiam de hiis que ibidem ad gentem dict' Dom' Regis Heredes vel Succeſſor' ſuor' mahemand' vel interficiend' in Inſidiis facerent vel imposterum facere preſumerent. Ac etiam de Hoſtellar' & al' omnibus & ſingulis perſon' qui in abuſu menſurar' & ponder' ſive in venditione Victual' contra formam Ordination' & Statut' vel eorum alicujus inde pro Communi Utilitate Regni ſui Angl' & populi ejuſdem nuper Regis Heredes & Succeſſor' ſuor' ejuſdem edit' & edend' delinquerent vel attemptarent in Civit' pred' & libertat' ejuſdem ſeu extunc imposterum delinquere vel attemptare preſumerent. Ac etiam de quibuſcunq; Vicecom' Conſtabular' Cuſtod' Gaole & al' Offic' qui in execut' Officiorum ſuor' circa premiſſa vel eor' aliqua indebite ſe habuer' aut imposterum indebite ſe habere preſumerent aut tepidi remiſſ. vel negligentes fuer' aut extunc tepidi remiſſ. vel negligent' fore contingerent infra Civit' pred' & Libertat' ejuſdem ac de omnibus & ſingulis Articulis & Circumſtant' & al' quibuſcunq; per quoſcunq; & qualitercunq; in Civit' pred' & Libertat' ejuſdem fact' ſive perpetrat' & que extunc ibidem fieri vel attemptari contingerent qualitercunq; premiſſ. aut eor' aliqua concernen', Et ad Indictament' quecunq; que coram Majore aut Recordatore Civit' pred' pro tempore exiſtent' & hujuſmodi ut preferr' Aldermann' vel quatuor aut pluribus eorundem quor' dict' Major vel Recordator pro tempore exiſtent' unus eſſe voluit tunc imposterum caperent' inſpiciend' & ad proceſſ. inde verſus omnes & ſingul' ſic indictat' vel quos imposterum ſic indictat' contingerent quouſq; caperent' redderent ſe vel utlagarent

faciend & continuand & ad omnia & singula murdra felon venefic incantac sor-tileg artis magic transgress. fallas conspiration & ac malefac' forestall re-grac ingrossar' extorcion conventicul indictament prēd ceteraq omnia & sin-gula premiss. secund Leges & Statut Regni sui Angl' prout in hujusmodi casu fieri consuevit aut debuit audiend & terminand & ad ealdem delinquen & quamlibet eorū pro delictis suis per fines redemption amerciament forisfac-tur' aut ac modo prout secundum legem & consuetud Regni sui Angl' ac for-mam Ordination & Statut eorundem fieri consuevit aut debuit castigand & pu-niend ac ad omnia ac & singula faciend exercend audiend terminand & exe-quend infra Civit prēd ac libertat ejusdem que Justic ad Pacem per Leges vel Statut hujus Regni sui Angl' facere exercere inquirere vel exequi possent & valerent & in tam amplis modo & forma prout aliquis ac aut aliqui ac Justic ad Pacem in aliquibus ac Com hujus Regni sui Angl' legittime facere exercere inquirere punire vel quoquo modo exequi possent aut valerent prout per ealdem literas patent inter ac plenius apparet. Quodq prēd Dom. Rex nunc per literas suas patent sub magno sigillo suo Angl' sigillat gerend dat apud Westm' predict' vicesimo quarto die Junij Anno Regni sui decimo quin-to quas iidem Major & Communitas ac Cives Civit London hic in Cur pro-ferunt omnes concession & ac quecunque in predict' literis patent predict' nu-per Regis Caroli primi superius specificat pro eodem Domin Regis nunc Here & Successor suis Majori & Communitat ac Civibus Civit London prēd & suor Successor in perpetuū ratificavit & confirmavit prout per ealdem lite-ras patent ipsius Domin Regis nunc inter ac plenius apparet & iidem Major & Communitas ac Cives Civit London ulterius dicunt quod tempore confection prēd literar patent prēd nuper Regis Caroli primi & diu antea & extunc hucusq fuer & adhuc existunt Major & Recordator Civit prēd ac Alderman ejus-dem Civit qui Major dicte Civit extitissent & onus Majorat Civit illius su-stin ac tres & plures ac Alderman ejusdem Civit qui onus Majorat Civit ill non sustinuissent Quodq a tempore confection earundem literar patent prēd nup Reg Caroli primi hucusq Major & Recordator Civit prēd p tempore exist ac hujusmodi Alderman ejusdem Civitat pro tempore exist qui onus Major-at Civit ill sustin Necnon tres Senior Alderman Civit prēd pro tempore exist qui diutius in Officio Aldermannat Civit prēd steter & onus & Offic Major Civit ill' non sustin virtute literar patent il' fuer Justic ad Pacem infra Civit prēd & libertat ejusdem conservand ac virtute literar patent ill' & secundum formam & effect eorund de tempore in tempus per tot tem-pus ill tenuer Session Pacis & placita coron scilicet talia placita coron qual Justic Dom Regis ad Pacem conservand assign per idem tempus ligittime tenuer vel tenere potuer inf. eandem Civitat.

Et eo Warranto iidem Major & Communitas ac Cives Civitat London per tempus in Informatione prēd superius specificat usi fuer & adhuc utuntur ac clamant habere & uti libertat privileg & franch' quod Major dict' Civit & hu-jusmodi Alderman ejusdem Civit qui onus Majorat Civit ill sustinuer ac inde fuerunt dimissi ac tres seniores Alderman ejusdem Civit qui diutius in Offic Aldermannat Civit prēd steter & onus & Officii Majorat Civit ill non sustuler fuer Justic dict Dom Regis ad Pacem infra Civit prēd conservand ac ad Sessions Pacis & Placita Corone (scilicet) talia Placita Coron qual Justic Dom Regis ad Pacem conservand assign ligittime tenere possent infra eand Civit tenend ac ad omnes Felon Riot Rout & Conventicul illicit infra Civit prēd inquirend audiend & terminand prout eis bene licuit & licet.

Absque hoc quod iidem Major ac Communitas ac Cives Civit London de libertat privileg & franches. ill' super dictum Dom Regem nunc per tempus prēd in Informatione prēd superius specificat usurpaver seu usurpant pro ut p Inform illam pro dicto Dom Rege nunc superius supponit Que omn & singu-la iidem Major & Communitas ac Cives Civit London parati sunt verificare unde petunt Judicium & quod libertat privileg & franch' ill eis & Successori-bus suis in perpetuum deinceps allocentur & adjudicent ac quod ipsi quoad pre-missa illa ab hac Curia dimittantur, &c.

Et

Et quoad reſid Libertat Privileg & Franch' in Information predict' ſpecificat per iplos Majorem & Communitat ac Cives Civitat London ſuperius minime clamat iidem Major & Communitat ac Cives Civit London Libertat Privileg & Franch' illis nunquam uſi fuerunt ſeu utuntur ſed de eiſdem penitus declamant, &c.

Et pred Robertus Sawyer Attorn dicti Dom Regis nunc Generat qui pro eod Dom Rege in hac parte ſequitur hito auditu placiti pred predict Majoris & Communitat ac Civium Civit pred petit inde diem loquendi uſq; Craſtinum Sancte Trinitat Et ei Conceditur coram Dom Rege ubicunq, &c. Idem dies dat eſt pred Majori & Communitat ac Civib' Civit London pred, &c. Ad quod quidem Craſtinum Sancte Trinitat coram Dom Rege apud Weſtm' ven tam pred Robertus Sawyer Miles Attorn Dom Regis nunc Generat qui pro eodem Dom Rege in hac parte ſequitur quam pred Major & Communitas ac Cives Civit pred p Attorn ſuum pred Et idem Attorn dicti Dom Regis nunc Generat quoad libertat privileg & franch' pred p iplos ſuperius clamat (viz.) iplos Majorem & Communitat ac Cives Civitat London fore de ſeipſis unum corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civitat London ac p idem nomen placitare & implacitari reſpondere ac reſponderi ſuperius placitat pro eodem Dom Rege nunc dic' quod p aliqua per predict Majorem & Communitat ac Cives Civitat London pred ſuperius placitando allegat eadem libertat privileg & franch' eiſdem Majori & Communitat ac Civibus Civitat London pred allocari ſeu adjudicari non debent nec iidem Major & Communitas ac Cives de premiſſ. in Informac' pred ſuperius ſpecificat exonerari debent quia dic' quod Cives Civit London pred a tempore cujus contrar' memor' homin non exiſtit non fuer' corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civitat London modo & forma prout predict Major & Communitas ac Cives Civit London pred ſuperius placitando allegaver'. Et hoc idem Attorn dict' Dom Regis nunc Generalt pro eodem Dom Rege nunc pet quod inquiratur per patriam. Et pred Major & Communitas & Cives Civit London pred ſcilicet, &c. Et pred Attorn dict' Dom Regis nunc Generat quoad placitum predict Majoris & Communitat ac Civium Civit London pred quoad libertat privileg & franchel. pred per iplos ſuperius clamat (viz.) iplos Majorem & Communitat ac Cives Civit London fore de ſeipſis unum corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civitat London ac per idem nomen placitare & implacitari reſpondere ac reſponderi ſuperius placitat ulterius dic' quod per aliqua per predict Majorem & Communitat ac Cives Civit London pred ſuperius placitando allegat. Eadem libertat privileg & franchel. eiſdem Majori & Communitat ac Civibus Civit London pred allocari ſeu adjudicari non debent nec iidem Major & Communitas ac Cives de premiſſ. in Informatione pred ſuperius ſpecificat exonerari debent, quia protestando quod Cives ejuſdem Civitat a tempore cujus contrar' memor' homin non exiſtit non fuer' corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civit London ac p idem nomen p totum tempus illud placitaver' ac implacitat fuerunt reſponder' ac reſponſ. fuer' & placitare & implacitari reſpondere ac reſponderi a toto tempore ſupradict' uſi fuer' & conſuever' prout pred Major & Communitas ac Cives Civit London pred ſuperius placitando allegaverunt pro placito tamen idem Attorn dict' Dom Regis nunc Generat p eodem Dom Rege nunc ulterius dic' quod pred Major & Communitas ac Cives Civit London pred aſſumentes ſup ſe fore corpus corporat & politicum ac ratione inde poteſtatem authoritatem habere ad ſeipſos inſimul convocand & aſſembland ad bona & ſalubria leges ordines & ordinaciones legibus & ſtatutis hujus Regni Angl' minime repugnan ſive contrar' pro meliori regimine & gubernacone Civit pred ac Civium & Inhabitantium ejuſdem Civitat ac p conſervacone pacis Dom Regis infra Civit pred iidem Major & Communitas ac Cives Civit London pred ſub colore & pretextu inde eorum privatum lucrum & commodum ſolum reſpicien contra fiduciam in corpore corporato & politico p Dom Regem & Leges hujus Regni Angl' poſit aſſumper

Replication.

aſſumpſer' illicitam & injuſtam poteſtatem & authoritat' ad denar' de ſubdit' ac ligeis Dom̃ Regis nunc levand' ad uſum ipſorum Majoris & Communitat' ac Civium Civitat' London pred' propr' colore legum ſive Ordinacon̄ p ipſos de facto ordinat' & ſtabilit' ablq; aliquo alio Jure Titulo ſive Authoritate quibuſcunq; ac in proſecucon̄ & execucon̄ hujuſmodi illegalis & injuſte poteſtat' & authoritat' p ipſos ſic uſurpat' iidem Major & Communitas ac Cives Civitat' London pred' die Jovis decimo ſeptimo die Septembris Anno Regni dict' Dom̃ Regis nunc viceſimo ſexto in eorum Communi Concilio adtunc tent' in Camera Guihald Civit' London pred' (viz.) in Paroch' Sancti Michaelis Baſſiſhaw London inſimul Aſſemblat' fuer' condider' & publicaver' quandam Legem p ipſos de facto inactitat' pro levacone ſeperalium denar' ſummar' de omnibus ſubdit' ac Ligeis Dom̃ Regis nunc tam liberis quam non liberis hominibus Civit' pred' & aliis extraneis ad publica Mercata infra Civitat' pred' tent' accedē cum victuat' & proviſionibus ſuis ibidem vendend' (viz.) de qualibet perſona pro quolibet onere equino Angl' Horſe-load proviſion̄ in aliquod public' Mercat' infra Civit' pred' p ipſum importat' ibidem vendend' duorum denar' p diem & p qualibet caniſtra Angl' Boſſet proviſion̄ in aliquod Mercat' pred' ibidem vendend' importat' unius denar' p diem & p qualibet Carectata proviſion̄ tract' cum non plur' quam tribus equis in aliquod Mercat' pred' ibidem vendend' importat' quatuor denar' p diem & p qualibet Carectata proviſion̄ tract' cum quatuor equis vel plur' in aliquod Mercat' pred' ibidem vendend' importat' ſex denar' p diem ac diverſarum al' denar' ſum̃ de quibuſlibet perſonis que aliqua victualia ſive proviſion̄ ad Mercat' infra Civit' London pred' ſeu eorum aliqua vel aliquod importerent ibidem vendend' ac p eandem legem ſic p eos illegalit' fact' iidem Major & Communit' ac Cives Civit' London pred' de facto ordinaver' quod eedem ſeperal' denar' ſumme ſolut' ſorent ad propr' opus & uſum pref'at' Majoris & Communitat' ac Civium Civit' London pred' ac quod ſi aliquis in Mercat' pred' exiſten̄ cum victual' ſive proviſionibus ſuis ibidem vendend' recuſaret ſive differret ſolvere reſpectivas ratas pred' tunc talis recuſans ſive differens amot' ſoret a loco ſuo in Mercat' pred'. Et ulterius idem Attorn̄ dict' Dom̃ Regis nunc Generat' p eodem Dom̃ Rege nunc dic' quod pred' Major & Communitas ac Cives Civit' London pred' ſub ſolo colore & pretextu legis pred' ſic p ipſos p eorum private lucro & commodo illegalit' fact' & ablq; aliquo alio jure Titulo ſive Authoritate quibuſcunq; diverſas ingentes denar' Summas in toto ſe attingen̄ ad quinq; mille libras p annum p ſpacium ſeptem annorum poſt pred' decimum ſeptimum diem Septembris Anno viceſimo ſexto ſupradicto proxim' ſequen̄ & amplius apud London pred' in Paroch' pred'. de omnibus Dom̃ Regis ligeis & ſubditis ad publica Mercata p totum ſpatium pred' infra Civit' pred' tent' cum victualibus & proviſionibus ibidem vendend' accedentibus exegerunt levaver' & exigi & levari fecerunt & denarios illos ad eorum propr'ius uſus converterunt & diſpoſuerunt in ſubverſionem boni regiminis & gubernacon̄is Civitatis pred' & in magnam oppreſſionem & depauperacon̄ ſubditor' dict' Dom̃ Regis nunc ad Mercat' predict' cum victualibus & proviſion̄ ſuis accedēn & venien̄ ad grave dampn̄ & nocument' omnium Ligeorum & Subdit' dict' Dom̃ Regis in Augmentac' preciorum omnium victuat' & proviſion̄ in Mercatis pred' vendit' ac in dict' Dom̃ Regis nunc & Corone ſue Regie exheredacon̄ manifeſtam ac contra fiduciam in corpore corporat' & politico p Dom̃ Regem ac Leges hujus Regni Angl' poſit', Et ulterius idem Attorn̄ dicti Dom̃ Regis nunc Generat' p eodem Dom̃ Rege nunc dic' quod ubi Seſſio Parliamenti Dom̃ Regis nunc p Prorogacon̄ tent' fuit apud Weſtm' in Com̃ Middleſex' ſup viceſimum primum diem Octobris Anno Regni dicti Dom̃ Regis nunc triceſimo ſecundo ac ibidem continuat' uſq; decimum diem Januar' tunc proxim' ſequen̄ ac ſup eodem decimo die Januarij Anno Regni dict' Dom̃ Regis nunc triceſimo ſecundo ſupradict' apud Weſtminſt' pred' idem Parliamentum Prorogat' fuit p dict' Dom̃ Regem nunc uſq; viceſimum diem tunc Inſtantis Januar' pred' Major & Communitas ac Cives Civitat' London pred' poſtea ſcil' die Jovis decimo tertio die Januar' Anno Regni dict' Dom̃ Regis nunc triceſimo ſecundo ſupradict' in eorum Communi Concilio tent' in Camera Guihald Civit' pred' viz. in Paroch' Sancti Michaelis Baſſiſhaw London pred' Aſſemblat' illicite malitioſe adviſate

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& ſeditiole & ablq; aliqua legali authoꝛitate in ſe aſſumpſer' ad cenſend & judicand dict' Dom̃ Regem nunc & Pꝛoꝛogacoñ Parliamenti p dict' Dom̃ Regem nunc ſic fact'. Ac adtunc & ibidem iidem Maiоꝛ & Communitas ac Cives Civitat London ſic in eodem Communi Concilio Aſſemblat vota & ſuffragia ſua dever' & oꝛdinaver' quod quedam Petitio ſub nomine Maiоꝛis Aldermannoꝛum & Commun Civit London in Communi Concil Aſſemblat dicto Dom̃ Regi nunc exhibit foꝛet in qua quidem Petic̃one content fuit quod p pꝛed Pꝛoꝛogac̃oñ Parliamenti pꝛed pꝛoſecuc̃oñ Juſtic publice hujus Regni ac pꝛeparac̃oñ Angl' the making Proviſion neceſſar' pꝛo pꝛeſervac̃oñ dicti Dom̃ Regis nunc ac ejus ſubditoꝛum pꝛoteſtantium recepiſſent obſtruc̃oñ Angl' Interrupc̃oñ & iidem Maiоꝛ & Communitas ac Cives Civitat London pꝛed in Communi Concilio pꝛed ſic ut pꝛefertur Aſſemblat illicite maliciole adviſate & ſeditiole & ea intenc̃one quod eadem Petitio publicat & diſperſa foꝛet inter ſubditos dict' Dom̃ Regis nunc fideles ad ipſos in opinion̄ inducend quod idem Dom̃ Rex nunc p Pꝛoꝛogac̃oñ Parliamenti pꝛed publicam Juſtic Regni obſtruxiſſet & ad eoſdem Subditos dict' Dom̃ Regis incitand in odium perſone dict' Dom̃ Regis & gubernac̃oñ in hoc Regno ſtabilit & ad pertuband pacem & tranquilitat in hoc Regno Angl' adtunc & ibidem oꝛdinaver' quod eadem Petitio ſic continen̄ ſeditioſam & ſcandaloſam materiam pꝛed impꝛeſſ. foꝛet ac poſtea ſcil' die & Anno ult ſupꝛadict' apud London pꝛed in Paroch' pꝛed eandem Petic̃oñ ea intenc̃one quod eadem publicat & diſperſ. foꝛet inter ſubdit dict' Dom̃ Regis nunc ad affectiones ſuas a dict' Dom̃ Rege nunc & gubernac̃oñ ſua alienand & divertend malitiole adviſate & ſeditiole impꝛeſſer' & impꝛimi & publicari fecer' & cauſaver' in contempt & ſcandalum dict' Dom̃ Regis nunc ac gubernac̃oñ ſue hujus Regni Angl' ac in pꝛomoc̃oñ & excitac̃oñ ſeditionis & perturbac̃oñ pacis & tranquilitat infra hoc Regnum Angl' & in pernitioſum aliоꝛum Dom̃ Regis nunc Subdit & Ligeoꝛum exemplum per quod idem Maiоꝛ & Communitas ac Cives Civitat London pꝛed libertat pꝛivileḡ & franchel. pꝛed foꝛe de ſeipſis coꝛpus coꝛpoꝛat & politicum per nomen Maiоꝛis & Communitat ac Civium Civitat London foꝛisfecer' pꝛed tamen Maiоꝛ & Communitas ac Cives Civitat London pꝛed poſtea ſcil' p tempus ſuperius in Infoꝛmac̃one pꝛed ſpecificat libertat pꝛivileḡ & franchel. ill' ſuper dict' Dom̃ Regem nunc uſurpaver' & adhuc uſurpant pꝛout p Infoꝛmac̃oñ pꝛed ſuperius verſus eos ſupponitur. Et hoc idem Attoꝛn̄ dict' Dom̃ Regis nunc General' p eodem Dom̃ Rege nunc parat eſt verificare unde petit judicium & quod pꝛed Maiоꝛ & Communitas ac Cives Civitat London de pꝛemiſſ. pꝛed Convincantur ac de libertat pꝛivileḡ & franchel. ill' abjudicentur & excludantur, &c. Et quoad placitum pꝛefat Maiоꝛis & Communitat ac Civium Civitat London pꝛed quoad libertat pꝛivileḡ & franchel. pꝛed p ipſos ſuperius clamat (viz.) ipſos habere Vicecom̃ Civit & Com̃ Civit London & Vicecom̃ Com̃ Midd' & nominare & eligere ex ſeipſis duas perſonas foꝛe Vicecom̃ Civit pꝛed & Com̃ ejuſdem Civit & Vicecom̃ Com̃ Midd'. Ac illos ſic nominat & elect' pꝛeficere & conſtituere Vic̃ Civit pꝛed & Com̃ ejuſdem Civit & Vic̃ Com̃ Midd'. Ac ut Vicecom̃ Civitat pꝛed & Com̃ ejuſdem Civitat ad execuc̃oñ & retoꝛn̄ omnium Bꝛevium Billarum & pꝛecept Dom̃ Regis p Adminiſtrac̃oñ & Execuc̃oñ Juſticie infra Civit pꝛed & Com̃ ejuſdem Civit exequend & faciend que ad Officium Vic̃ faciend pertinent ac ad faciend & exequend omnia & ſingula alia infra Civit pꝛed & Com̃ ejuſdem Civit que ad Officium Vicecom̃ faciend pertinent ac Vicecom̃ Com̃ Middleſex' p eoſ Com̃ deſervitur' ac omnia Bꝛevia Billas & pꝛecept Dom̃ Regis infra Com̃ Middleſex pꝛed p Adminiſtrac̃one & Execuc̃one Juſticie ibidem exequend & retoꝛn̄ inde faciend que ad Officium Vic̃ faciend pertinent ſuperius placitat: Necnon quoad placitum pꝛefat Maiоꝛis & Communitat ac Civium Civitat London pꝛed quoad libertat pꝛivileḡ & franchel. p ipſos ſuperius clamat (viz.) Maiоꝛ dict' Civitat & hujuſmodi Aldeꝛman ejuſdem Civitat qui Officium Maiоꝛat Civit illius ſuſtinuer' ac inde fuer' dimiſſi ac tres Aldeꝛman ſen̄ Civit pꝛed qui diutius in Officio Aldeꝛman Civit pꝛed ſteter' & onus & Officium Maiоꝛat Civit pꝛed non ſuſtinuer' foꝛe Juſticiar' Dom̃ Regis ad pacem infra Civit pꝛed conſervandum ac ad Seſſion̄ pacis & placita Coꝛone (ſcilicet) talia placita Coꝛone quar Juſticiar' Dom̃ Regis ad pacem conſervand aſſign̄ ligitime

time tenere poſſent infra eandem Civitat tenend ac ad omnia Felon Riot Rout & Conventicul illicit infra Civitat pred inquirend audiend & terminand ſuperius placitat idem Attorn Dom Regis nunc General' qui p eodem Dom Rege in hac parte ſequitur pet licenc inde interloquend coram Dom Rege uſq a die Sancti Michaelis in tres ſeptimanas ubicunq, &c. Et ei conceditur, &c. idem dies dat eſt prefat Major & Communitat ac Civibus Civit London pred, &c.

Rejoynder. Et pred Major & Communitas ac Cives Civitat London quoad pred placit pred Attorn dicti Dom Regis nunc Generalis in Allign foris factur libertat privileg & franchel. ſequen videlt ipſos Majorem & Communitat ac Cives Civitat London fore de ſeipſis unum corpus coporat & politicum in re facto & nomine p nomen Majoris & Communitat ac Civium Civitat London ac per idem nomen placitare & implicitari reſpondere ac reſponderi p ipſos ſuperius clamat ſuperius replicando placitat protestando quod placit illud ac materia in eodem content minus ſufficien in Lege exiſtunt ad ipſos Major & Communitat ac Cives Civitat London de libertat privileg & franchel. illis abſudicand ſive excludend Protestando etiam quod nullus actus vel factum neq aliqua ordinatio Angl' By-Law per Commune Concilium vel per Majorem Aldermannos & Commune Concilium Civitat pred confect' eſt actus vel factum corporis corporat & politici pred Protestandoq etiam quod ipſi pred Major & Communitas ac Cives Civitat London contra fiduciam in eis repoſit nunquam aſſumpſer ſuper ſe aliquam illicitam vel injuſtam poteſtatem ad denar de ſubditis & ligeis Domini Regis Levand ad privat Lucrum & commodum ipſor Majoris & Communitat ac Civium Civitat London colore Legum ſive ordinationum p ipſos fact' ſive ordinat prout pred Attorn dicti Dom Regis nunc Generalis p eodem Dom Rege ſuperius ſuppon protestandoq ulterius quod iidem Major & Communitas ac Cives Civitat London non Levaver ſeu exeger tantas denar ſummas p annum de perſonis ad publica Mercata infra Civitat pred tent cum Victualibus & Proviſionibus ibidem Vended accedn quant dictus Attorn Generalis p eodem Domino Rege ſuperius allegavit p placito tamen quoad confection & publication Legis p Levatione denarior de perſonis ad publica Mercata infra Civitat pred tent cum Victualibus & Proviſionibus ibidem vended accedn ac exactionem & Levation hujuſmodi denar ſuperius fieri ſuppoſit iidem Major & Communitas ac Cives Civitat London dicunt quod Civitas London pred eſt & a tempore cujus contrarij memoria hominum non exiſtit fuit ſumma & Capitalis Civitas & Metropolis ac principalis Portus hujus Regni Angl' & in Civibus & Inhabitantibus maxime populoſa & in concurſu hominum tam Ligeor Dom Regis quam extraneor copioſiſſima Emporiumq totius Europe celeberrimum Quodq habentur & tenentur & a tempore cujus contrarij memoria hominum non exiſtit habebantur & tenebantur publica Mercata infra Civitat pred p victualibus & proviſionibus adinde adduct' ibidem vendend Quodque ipſi pred Major & Communitas ac Cives Civitat London pred decimo ſeptimo die Septembris Anno viceſimo ſexto ſuprad dicto in replicatione pred mentionat necnon continue poſtea, & a tempore cujus contrarij memoria hominum non exiſtit ſeizit fuer & adhuc ſeizit exiſtunt de & in publicis Mercatis pred in Dom ſuo, ut de feodo, ac p totum idem tempus ſumptibus ſuis propriis provider ac providere conſuever & debuerunt Fora Mercatoria ſive Loca ubi hujuſmodi Mercata tent fuer quotieſtunq neceſſe fuit, & Stallas Stationes & al' Accommodationes p perſonis ad eadem Mercata venien cum victualibus & proviſionibus ibidem vendend p meliori & magis convenien venditione & expoſitione eorundem, & Superviſores & alios Officiarios Mercatorum illorum p preſervatione boni Ordinis in eiſdem Mercatis, & meliori regulatione eorundem, & magni concurſus populi adinde confluen ac emundaverunt & emundare conſueverunt, & debuerunt Fora Mercatoria predicta, & p ſuſtentatione dictorum ſumptuum ſuorum per totum tempus predictum habuer & percepер ac habere & precipere conſuever diverſas rationabiles Tolnet Ratas, ſive denariorum ſummas de quibuſcunq perſonis ad Mercata pred ſic ut prefertur venien p Stallis, Stationibus, & aliis Accommodationibus p eas p venditione expoſi-

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tione huſulmodi victualium & proviſionum in Mercatis illis habit. Et iidem Major & Communitas ac Cives Civitat London ulterius dicunt quod Cives & Liberi homines Civitatis pred predicto decimo ſeptimo die Septembris, Anno vicesimo certo ſupradicto, & ſemper fuer, & adhuc exiſtunt valde numeroſi, videlicet, quinquaginta mille homines & plur, Quodq infra dictam Civitat London videlicet, apud pred Parochiam Sancti Michaelis Baſſiſhaw a tempore cujus contrarij memoria hominum non exiſtit habebatur, & fuit Commune Conſilium ejuſdem Civitatis de tempore in tempus, quoties neceſſe fuit in eadem Civitate aſſemblat, conſiſtens de Majore & Alderm dicte Civitatis pro tempore exiſten ac de quibuſdam Civibus exiſten Liberis hominibus Civitatis illius, non excedent numerum ducentar & quinquaginta perſonarum e Civibus & Liberis hominibus Civitat pred annuatim Elect' fore de Communi Conſilio illo, qui quidem Cives ſic Elect' in huſulmodi Communi Concilio vocantur Communiarij, Angl' Commons Civitat London. Quodq infra Civitat pred videlicet apud pred Parochiam Sancti Michaelis Baſſiſhaw habetur & exiſtit, & a tempore cujus contrarij memoria hominum non exiſtit habebatur, & fuit talis conſuetudo uſitat & approbat videlicet quod Major & Alderm dict' Civit ac huſulmodi Cives ſic Elect' fore de Com Conc ejuſdem Civitatis p tempore exiſten in Communi Concilio ſuo infra Civitat illt aſſemblat a toto tempore ſupradicto ſecundum conſuetudinem Civitat pred fecer & conſtituer ac facere & conſtituere conſuever & poſſunt ac potuer Leges & Ordinationes p meliori Regulatione & Gubernatione publicor Mercator infra Civitat pred ac p appunctuatione convenien Locor & Tempor quando & ubi infra eandem Civitat Mercata illa tent fuerint & p aſſenſſione, & in certitudin reductione rationabilium Molnet, Ratar ſive denar ſummarum ſolvend per perſonas ad eadem Mercata venien p Stallis, Stationibus, & aliis Accommodationibus per eas p venditioni expoſitione victualium & proviſionum in Mercatis illis habit quoties, & quando eis videbitur expediri, dum tamen Leges & Ordinationes huſulmodi Dom Regi & populo ſuo ſint bone Fidei & Rationi conſone, ac Legibus & Statut hujus Reg Angl' minime contrar, Quodq in Magna Carta de Libertatibus Angl' in Parliamento Dom Henrici quondam Regis Angl' tertij apud Weſtm' in Com Middleſex, An Regni ſui nono tent edit & provis. continetur quod Civitas London habeat omnes Libertates ſuas Antiquas & Conſuetudines ſuas, Et iidem Major & Communitas ac Cives Civitat London ulterius dicunt, quod Dom Edwardus quondam Rex Angl' tertius in Parliamento ſuo apud Weſtm' in Com Midd' Anno Regni ſui primo tent per quandam Cartam ſuam de aſſenſu Prelator Comitum Baronum ac totius Communitatis Regni ſui in eodem Parliamento ſuo apud Weſtm' pred convocat exiſten ac authorizitate ejuſdem Parliamenti confirmavit tunc Civibus Civitat London pred Libertates ſubſequen (inter alia) habend ſibi & Succeſſoribus ſuis in perpet imprimis recitando, Quod cum in Magna Carta de Libertatibus Angl' contineatur quod Civitas London habeat omnes Libertates ſuas antiquas & conſuetudines ſuas, & quod iidem Cives tempore confectionis dict' Carte, ac temporibus St. Edwardi Regis, & Confeſſoris, & Will' Conqueſtoris, & al' Progenitor dicti Regis Edwardi tertij, diverſas Libertates & Conſuetudines tam per Cartas ipſor Progenitorum ſuorum quam ſine Cartis, ex Antiqua Conſuetudine habuiſſent voluit, & conceſſit idem Rex Edwardus tertius p ſe & Heredibus ſuis per Cartam ill authorizitate pred quod iidem Cives haberent Libertates ſuas ſecundum formam Magne Carte ſupradict' prout per eandem Cartam gerend dat apud Weſtm' pred certo die Martij, Anno Regni dicti Regis Edwardi tertij primo ſupradicto, ſub magno ſigillo ſuo Angl' ſigillat hic in Cur prolat inter alia plenius apparet. Et iidem Major & Communitas ac Cives Civitat London ulterius dicunt, Quod ad inſtant & requiſitionem Communitatis Regni Angl' in Parliamento Dom Richardi nuper Regis Angl' ſecundi poſt Conqueſt' apud Weſtm' pred Anno Regni ſui ſeptimo tent aſſemblat p majori quiete & pace inter Ligeos ejuſdem nuper Regis fovend & p bono publico, omnes Conſuetudines, Libertates, Privileg & Franchel. Civitat pred tunc Civibus Civitat pred & eorum Succeſſoribus, Authorizitate ejuſdem Parliamenti ratificat & confirmat fuer. Quodq predictus Dominus Rex nunc per Literas ſuas Patentes

sub magno sigillo suo Angl' sigillat' gerend' dat' apud Westm' pred' vicesimo quarto die Junij, Anno Regni sui decimo quinto quas iidem Major & Communitas ac Cives Civitat' London hic in Cur' proferunt, p ipso Rege Hered' & Successoribus suis ratificavit & confirmavit Majori & Communitati ac Civibus Civitat' London & Successoribus suis omnia & singula, Jurisdictiones, Authoritat', Privileg', Libertates, Franchises, Quietantias, Immunitates & Consuetudines quecunq; que prefat' Major & Communitas ac Cives Civitat' London vel Predecessores sui per nomen Majoris & Communitat' ac Civium Civitat' London seu per nomen Majoris Alderm' Civium & Communitat' London seu per nomen Majoris & Civium Civitat' London seu per nomen Major' & Communitat' Civitat' London seu per nomen Civium Civitat' London seu per nomen Baron' London seu per nomen Baron' Civitat' London seu per aliquod aliud nomen quodcunq; ratione vel vigore Literar' Patentium, Cartar' seu Confirmation' in eisdem Literis Patentibus dicti Dom' Regis nunc prementionat' vel alicujus seu aliquor' usus vel usuum, Prescriptionis vel Prescriptionum seu alio Legali modo quocunq; aliquo tempore, vel aliquibus temporibus ante tunc habuissent, seu rationabilit' usi fuissent aut exercuissent, habend' tenend' gaudend' & exercend' omnia & singula premissa pred' eisdem Majori & Communitati ac Civibus Civitat' London pred' & Successoribus suis imperpetuum adeo plene libere & integre, ac in tam amplis modo & forma prout in iisdem literis patentibus superius mentionantur fore data, sive concessa, aut aliter usu, prescript' vel alio legali modo, seu jure quocunq; ante tunc respective habit' obtent' sive gavisa fuissent, ac si separatim, singulatim & nominatim in & per dictas literas patentes ipsius Dom' Regis nunc express. nominat' declarat' concessa & manifesta essent & fuissent, put per easdem literas patentes (inter alia) plenius apparet. Et iidem Major & Communitas ac Cives Civitat' London ulterius dicunt, quod post magnam illam Conflagration' maxime partis Civitat' London pred' que fuit in mense Septembris, Anno Dom' milesimo sexcentesimo sexagesimo sexto ac alteration' in Civit' & Mercat' pred' perinde occasionat' diverse controversie & questiones orte fuer' infra eandem Civitat' de & concernen' Stabilition' publicorum Mercator' infra Civit' ill' & denar' summar' per Ligeos Dom' Regis p victualibus & provisionibus in Mercatis illis venditioni exposit' solubil' ac superinde pred' die Jovis decimo septimo die Septembris, Anno Regni dicti Dom' Regis nunc vicesimo sexto supradicto, quidam Will' Hooker Miles, tunc Major Civitat' pred' & Alderm' dicte Civitat' ac Communiarij sive Cives de Communi Concilio ejusdem Civitatis tunc existen' in Communi Concilio suo infra eandem Civitat' (scil' in pred' Camera Guildhall Civitatis illius, scituat' in pred' Parochia Sancti Michaelis Bassishaw) ad tunc assemblat' secundum consuetudinem dicte Civitat' ac Authoritate ejusdem Communis Concilij fecer' constituer' & publicaver' quendam Actum sive Ordination' p meliori regulatione & gubernatione publicorum Mercator' infra Civitat' pred' tent' intitulat', An Act for the settlement and well ordering of the several publick Markets within the City of *London:* Per quem quidem Actum sive Ordination' inter alia recitando, quod cum p accommodation' populi Mercat' Angl' of Market-People, cum Stallis, asseribus, tectur' Angl' shelter, & aliis hujusmodi rebus necessariis p eor' Stationibus in aliquibus Mercat' infra Civitat' ill' ac p emundand' paviend' escurand' & munda custodiend' eadem; Ac etiam p sustinendo, Angl' defraying, inciden' onera reparationis & manutentionis dictorum Mercator' & similiter ad gratificand' & munerand' curam & attendentiam talium personarum quat' forent occupat' in eisdem quedam rationabiles Rate p dict' accommodationibus & oneribus, semper solut' fuissent & ad intentionem quod dicte Rate forent certe & publice facte omni populo Mercatorio, Angl' Market-People, per quod persone que extunc per ordinem illius Cur' Com' Concilij occupat' forent tanquam Collectores, vel Receptores earundem Ratar' prevenirentur a demandando, exigendo, seu recipiendo plus quam allocat' fuit per Actum sive Ordination' ill' ordinat' & inactitat' fuit Authoritate ejusdem Com' Concilij inter alia, quod omnes & quelibet persona & persone ad aliquod dict' Mercator' accedend' ad commoditates suas vendend' & utterand' extunc solverent tali persone seu personis quales fuer' vel forent de tempore in tempus appunctuat' ad capiend' & recipiend' proficua omnium vel

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aliquor dictor Mercator' ad uſum Majoris & Communitat' ac Civium Civitat' London de & ab omni populo Mercatorio adinde accedenc' p Stallis, Stationibus, & aliis accommodationibus ſuis in ſeparat' Mercatis prēd' ut prefertur, ſecundum Ratas ſequen' & non amplius; videl' p qualibet Stalla ſive Station' de Longitudine octo pedum & Latitudine quatuor pedum p venditione carnis, aut piſcis duos ſolid' & ſex denar' per ſeptem annos p qualibet Stalla ſive Statione de Longitudine ſex pedum & Latitudine quatuor pedum duos ſolid' p ſeptimam' p qualibet Stalla ſive Statione de longitudine ſex vel octo pedum & latitudine quatuor pedum, p aliis commoditatibus tres denar' p diem, p quolibet onere equino proviſion' non ſuper Stallas, vel ſub publica tectur' Angl' ſhelter, duos denar' p diem, p qualibet Caniſtra, Angl' Doſſer, conſimilis proviſion' unū denar' p diem, p quat' carectat' tract' cum non plur' quam tribus Equis quatuor denar' per diem & p qualibet carectat' tract' cum quat' Equis vel pluribus ſex denar' per diem. Ac ulterius ordinat' & inactitat' fuit dicta Authoritate quod Collectores aut Receptores appunctuat' vel appunctuand' ut prefertur, haberent poteſtatem ſuper obſtinata denegatione ſeu dilatione alicujus populi Mercatorij, ad ſolvend' reſpectivas Ratas prēd' illos ab eorum reſpectivis Stationibus & locis amovere & diſlocare. Et iidem Major & Communitas ac Cives Civitat' London ulterius dicunt quod eedem rate per Actum ſive ordinationem ill' ut prefertur ſolvi ordinat' prēd' tempore confectionis ordinationis illius & extunc huculq; fuerunt rationabiles & adhuc rationabiles exiſtunt quodq; rate & denariorum ſumme per eundem Actum ſive Ordinationem ſolvi ordinat' ſunt omnes rate tolnet' & denarior' ſumme p victualibus & proviſionibus in Mercat' prēd' vendit' ſeu venditioni expoſit' per aliquas perſonas a dicto tempore confectionis ejuſdem Ordinationis huculq; ad uſum Majoris & Communitat' ac Civium Civitat' London ſolubit' & ſolut' quas quidem ratas ſic ſolvi ordinat' & null' alias iidem Major & Communitas ac Cives Civitat' London a tempore Actus ſive ordinationis illius ut prefertur fact' huculq; exeger' & percepер' ſecundum formam & effectum ejuſdem Actus ſive Ordinationis. Qui quidem Actus ſive Ordinatio eſt eadem Lex per ipſos Majorem & Communitat' ac Cives Civitat' London ſuperius de facto inactitat' & publicat' ſuppoſit' in prēd' placito prēd' Attorn' Generalis ſuperius replicando placitat' ſpec' Ablq; hoc quod aliqua Lex actus ſive ordinatio p levatione denar' prēd' de plonis ad Mercata prēd' accedenc' cum victualibus & proviſionibus ibid' vendenc' inactitat' fact' ſive publicat' fuit aliter vel alio modo quam iidem Major & Communitas ac Cives Civitatis London ſuperius allegaver' put' idem Attorn' Generalis p dicto Dom' Rege nunc ſuperius ſuppon' & hoc parat' ſunt verificare: Et quoad reſid' prēd' placiti prēd' Attorn' Generalis in Affign' forisfactur' ut prefertur ſuperius replicando placitat' iidem Major & Communitat' ac Cives Civitat' London dicunt quod viceſimo quarto die Aprilis, Anno Regni dict' Dom' Regis nunc triceſimo & per diverſos annos tunc ult' elaplos ac poſt eundem viceſimum quartum diem Aprilis, infra hoc Regnum Angl' & alibi, videlicet apud London prēd' in prēd' Parochia Sanct' Michaelis Baſſiſhaw proditoria & execrabilis conſpiratio & conjuratio machinat' & proſecut' fuit per Papiſtas, Angl' Papiſts, ad interficiend' & murdrand' Dom' Regem nunc & ad alterand' mutand' & ſubvertend' antiquas gubernation' & Leges ejuſdem Regni & ad ſuppriment' veram Religionem in eodem ſtabilit' & ad extirpandum & diſtruendum profeſſores ejuſdem Religionis: Que quidem conſpiratio & conjuratio machinat' & proſecut' fuer' & diverſis locis & per ſeparat' vias & media ac per magnum numerum perſonarum ſeparat' qualitat' & graduum que agebant & ſe occupaver' in eiſdem ad exequend' & perimplend' prevdicta ſcelerata & proditoria machinationes & propoſita: Quodq; poſtea ſcilicet, viceſimo ſeptimo die Septembris Anno triceſimo ſuprad'cto, Edmundus-Bury Godfry Miles tunc unus Juſticiar' Dom' Regis ad pacem in Comit' Midd' conſervandum aſſignat' ſecundum Officij & juramenti ſui debitum apud Parochiam Sancti Martini in Campis in eodem Comitat' Midd' cepit Examination' & Information' de prefat' Conſpiratione & Conjuratione, ac Information' quod magna illa Conflagratio maxime partis Civitatis London que fuiſſet in menſe Septembris Anno Dom' millimo ſexcenteſimo ſexageſimo ſexto fact' fuit p Papiſtas, poſteaque per adviſamentum, aſſenſum, conſilium, inſtigationem & procurationem

aliquorum dicorum Conſpiratorum diverſe perſone in inſidiis jacuer' & inſecut' fuerunt prefat' Edmund-Bury Godfrey diverſis diebus ea intentione ad ipſum murdrand' videlicet apud Parochiam Sanct' Mariæ le Savoy in dicto Comitat' Midd' Quod quidem murdrum poſtea, ſcil' duodecimo die Octobris Anno triceſimo ſuprad'co, apud eandem Parochiam per eos perpetrat' & effectum fuit; ac perpetrat' & effectum fuit ea intentione ad ſuppriment' Examination' & Information' quas ipſe ut prefertur cepiſſet, & ad deterrend' & intimidand' Magiſtrat' & al' ad agendo in ulteriori detectione Conſpirationis & Conjurationis pred' pro quo quidem Murdro quidam Robertus Greene, Girald *Clericus*, Henricus Bury, Laurencius Hill, Dominic Kelley & Filibertus Vernat, poſtea, ſcilicet Termino Sanct' Hillarij Annis Regni dict' Dom' Regis nunc triceſimo & triceſimo primo in Curia Dom' Regis coram ipſo Rege apud Weſtm' in dicto Com' Midd' per quandam Jurat' pred' ejuſdem Com' Midd' debita juris forma indictat' fuerunt. Ad quod quidem Indictamentum, poſtea, ſcilicet eodem Termino pred' Robertus Green, Henricus Bury, & Laurencius Hill, ſeparatim placitaver' quod ipſi non fuer' inde culpabiles, & de eo poſuer' ſe ſuper Patriam, ac poſtea, (ſcilicet) eodem Termino Sanct' Hillarij in eadem Cur' apud Weſtm' pred' pro dict' Felonia & Murdro per Juram' patrie pred' in debita juris forma triati fuerunt, & inde legitime convicti & attincti prout per Record' inde in eadem Curia Dom' Regis coram ipſo Rege apud Weſtm' pred' reſident' plenius apparet. Quodq; pro altis proditionibus & proditoriis, conſpirationibus & conjurationibus pred' quidam Edwardus Coleman & Willielmus Ireland, Thomas Pickering & Johannes Grove, ac Thomas White alias Whitebread, Willielmus Harcourt alias Harriſon, Johannes Fenwick, Johannes Gavan, & Antonius Turner, ac Richardus Langhorne Arm' exiſten' Papiſte & Superſtition' Romanam profitentes ante pred' decimum tertium diem Januarij, Anno triceſimo ſecundo ſuprad'co debito modo & ſecundum Legis hujus Regni Angl' formam triat' convict' & attinct' fuer' (ſcil') pred' Edwardus Coleman Termino Sanct' Michaelis Anno Regni Dom' Regis nunc triceſimo, in Cur' Dom' Regis coram ipſo Rege (eadem Cur' apud Weſtm' in Com' Midd' adtunc & adhuc exiſten') prout per Recordum & proceſſum inde in eadem Cur' reſident' plenius apparet: ac pred' Willielmus Ireland, Thomas Pickering & Johannes Grove, ad deliberation' Gaole Dom' Regis de Newgate, tent' p dicto Com' Midd' apud Juſtice-Hall in le Old Bailey in Suburbiis dicte Civitatis London in menſe Decembris, Anno triceſimo ſuprad'co, prout per Recordum & proceſſum inde in cuſtod' Cuſtodis Rotulorum dict' Com' Midd' remanen' plenius apparet: ac pred' Thomas White alias Whitebread, Johannes Fenwick, Willielmus Harcourt alias Harriſon, Johannes Gavan & Antonius Turner ad deliberationem Gaole Dom' Regis de Newgate tent' per adjornament' p Com' Midd' pred' apud pred' Juſticehall in le Old Bailey in Suburbiis Civitatis London, die Veneris decimo tertio die Junij, Anno Regni dict' Dom' Regis nunc triceſimo primo put per Recordum & proceſſum inde in cuſtodia dict' Cuſtodis Rottul' ejuſdem Com' Midd' remanen' plenius apparet & pred' Rich' Langhorne ad deliberationem Gaole Dom' Regis de Newgate tent' p adjornament' p dict' Civit' London apud Juſticehall in le Old Bailey in Parochia St. Sepulchri in Warda de Farrington extra London die Sabbati decimo quarto die Junij, Anno triceſimo primo ſuprad' prout per Record' & proceſſ. inde in Cuſtod' Cuſtodis Rottul' dict' Civitat' London remanen' plenius apparet. Quodq; Willielmus Comes Powis, Willielmus Vicecomes Stafford, Henricus Dom' Arundel de Wardor, Willielmus Dom' Petre, & Johannes Dom' Bellaſis, triceſimo die Novembris Anno Regni dict' Dom' Regis nunc triceſimo ſuprad' apud Weſtm' pred' in pred' Com' Midd' de altis proditionibus & proditoriis conſpirationibus & conjurationibus pred' legitime accuſati & ſuper inde Priſone Dom' Regis, ſcil' Turri London Comiſſ. fuer' ibidem ſalvo cuſtodiend' ac in cuſtodia ſic exiſten' iidem Williel' Comes Powis, Williel' Vicecomes Stafford, Henricus Dom' Arundel de Wardor, Willielmus Dom' Petre, & Johannes Dom' Bellaſis ad Seſſion' Parliament' dict' Dom' Regis nunc apud Weſtm' pred' decimo quinto die Martij Anno Regni ſui triceſimo primo per Prorogation' tent' p Communes hujus Regni Angl' in eodem Parliamento aſſemblat' coram Magnatib' & Proceribus ejuſdem Regni in Parliamento illo convocat' & convent' de eo quod per

multos

multos Annos tunc ult̃ p̃teritꝫ p̃ditoꝛia & execrabilis conſpiratio & conjuratio infra hoc Regnum Angl' & alibi machinat & p̃secut fuit per Papiſtas ad alterand̃ mutand̃ & ſubvertend̃ antiquas gubernatioñ & Leges hujus Regni & Nationis & ad ſuppꝛimend̃ veram Religionem in eiſdem ſtabilit & ad extirpand̃ & diſtruend̃ Pꝛofeſſoꝛes inde que quidem conſpiratio & conjuratio machinat & p̃secut fuiſſet in diverſis Locis & per ſeparat vias & media & per magnum numerum perſonar ſeperat qualitatum & graduum que agebant in eiſdem & intendebant per inde ad exequend̃ & conſummand̃ p̃d̃ ſceleraꝫ & p̃ditoꝛias machinationes & p̃poſita. Quodꝙ dic̃ Willielmus Comes Powis, Willielmus Vicecomes Stafford, Henricus Dom̃ Arundel de Wardor, Willielmus Dom̃ Petre, & Johannes Dom̃ Ballaſis, ſimul cum Phil' Howard communiter voc̃ Cardinal de Norff. Thoma White alias Whitebread, com̃ voc̃ Pꝛovinciaꝫ Jeſuitar' in Anglia, Rich' Strange nuper voc̃ Pꝛovinciaꝫ Jeſuitar' in Anglia, Vincent, com̃ voc̃ Pꝛovinciaꝫ Dominicor' in Anglia, Jacobo Cooper, com̃ voc̃ Pꝛeſident Benedictinor' Johanne Warner alias Clare Baronetto, Williel' Harcourt, Johanne Keins, Nicho' Blundel, Pool, Edwar' Mico, Thoma Bedingfield alias Benefield, Baſil' Langworth, Carolo Peters, Rich' Peters, Joan' Conyers, Dom̃ Georgio Wakeman, Anglice, Sir George Wakeman, Thoma Fenwick, Dominick Kelly, Fitz-Gerrald, Evers, Dom̃ Thoma Preſton Anglice Sir Thomas Preſton, Willielm' Lovel Jeſuitis, Dom̃ Baltemore, Johanne Carrel, Johanne Townly, Rich' Langhorne, Willielm' Fogarty, Thoma Penny, Mattheo Medbourne, Edward' Coleman, Willielm' Ireland, Johanne Grove, Thoma Pickering, Johanne Smith, & diverſis aliis Jeſuitis ſacerdotib' fratrib' Angl' Fryers & aliis perſonis ut falſi p̃ditoꝛes Dom̃ Regi nunc & huic Regno infra Tempus ult̃ p̃d̃ p̃ditoꝛie conſuluiſſent machinat fuiſſent & egiſſent ad & p̃ conſummatione dict' impꝛobar' pernitiolar' & p̃ditoꝛiar' machinatioñ & ea de cauſa nequiſſime & p̃ditoꝛie agreaſſent conſpiraſſent & determinaſſent impꝛiſonare deponere & murdꝛare ſacram Majeſtatem Dom̃ Regis nunc & ipſum de regali ſtatu coꝛona & dignitate ſuis depꝛivare & per malicioſam & advilak Locutionem Scriptionem & alit̃ declaraſſent tak ſua p̃poſita & intentiones ac etiam hoc Regnum & Nationem Pape & Tyrannice ſue Gubernacioni ſubjicere & ſtatus & hereditates Pꝛoteſtant ſubdit Dom̃ Regis letzire & ink ſele partiri ac erigere & reſtituere Abbatias, Monaſteria & al Convent & Societates que dudum per Leges hujus Regni p̃ ſuperſtitione & Idololatria ſuis ſuppꝛeſſ. fuiſſent & eis tꝛavere & reſtituere terras & poſſeſſiones in Dom̃ Rege nunc & ſubditis ſuis per Leges & Statuta hujus Regni veſtit ac etiam nova Monaſteria & Conventus fundare & erigẽ & omnes Pꝛoteſtant Epiſcopol. & al perſonas Eccleſiaſticas ab officiis beneficiis & pꝛomotionib' ſuis amovere & depꝛivare & eo modo perſonam Dom̃ Regis nunc diſtruere Pꝛoteſtantem Religionem extirpare jura libertates & pꝛopꝛietates omnium pꝛobor' ſubditor' Dom̃ Regis evertere Legalem gubernationem hujus Regni ſubvertere & idem Tyrannidi ſedis Romane ſubjicere. Quodꝙ dic̃ Conſpiratoꝛes & eoꝛum participes & Confederatoꝛes p̃ditoꝛie habuiſſent & tenuiſſent ſeparales conventiones aſſemblationes & conſultationes in quibus inter eos machinat & deſignat fuiſſet que media uterentur & que perſone & Inſtrumenta impenſ. foꝛent ad Dom̃ Regem nunc murdꝛand̃ & ad tunc & ibidem determinaſſent id efficere per venefic̃ diſploſionem Angl' Shooting perfoꝛationem Angl' Stabbing, vel aliqua tak vias & media & obtuliſſent munera & pꝛomiſſiones de advantag̃ ſeperalib' perſonis ad idem exequend̃ ac conduxiſſent & impendiſſent ſeparales impꝛobas perſonas ire ad Windſor & alia loca ubi Dom̃ Rex reſidebat ad ipſum Dom̃ Regem murderand̃ & diſtruend̃ que quidem perſone ſeu earum aliq̃d talia munera acceptaſſent & perpetrationem inde ſuſcepiſſent & actualit̃ ad dic̃ loca intentione & pꝛopoſito ill̃ iviſſent. Quodꝙ dic̃ Conſpiratoꝛes ad melius perimplend̃ p̃ditoꝛias ſuas machinationes conſuluiſſent ad levand̃ ac pꝛocuraſſent & levaſſent homines monetam equos arma & ammunitionem ac etiam applicationem feciſſent ad & tractaſſent & coꝛreſpondiſſent cum Papa, eſus Cardinalib' Nunciis & Agentib' & aliis foꝛinſecis Miniſtris & perſonis ad Levand̃ & obtinend̃ ſupplementa, Ang' ſupplies, homiñ monet armor & ammunitionis, cum eiſdem facere' levare & excitare guerram rebellionem & tumultus infra hoc

Regñ

Regn̄ & idem invadere cum virib' forinsecis & deprehendere Angl' to surprise sesire & distruere Regie Majestatis classem Angl' Navy fortalitia Angl' Forts armamentaria Angl' Magazines & loca fortia, Angl' places of strength infra hoc Regn̄ super quo calamitates guerre murdra innocenc' subditor' viror' mulier' & liberor' conflagrationes rapine devastationes & al' tremend' miserie & exitia inevitabil' insequerentur in ruinam & destructionem hujus Nationis, Et quod dic' conspiratores procurassent & acceptassent ac deliberassent separal' instrumenta commissiones & potestates fact' & concess. per aut subt' Papam vel al' illicitam & usurpat' authoritatem ad levand' & disponend' homines monetam, arma & al' necessaria p eor' sceleratis & proditoriis machinationibus ac nominatim Commissionem p dic' Henrico Dom̄ Arundel de Wardor fore Dom̄ Cancellar' Angl' aliam Commission̄ dic' Willielm' Comit' Powis fore Dom̄ Thesauraxium Angl' aliam Commission̄ dic' Johanne Dom̄ Bellasis fore ducem General' Angl' General' Exercitus levand' al' Commissionem dic' Willielmo Dom̄ Petre fore locum tenen̄ ducis General Angl' Lieutenant General dic' exercitus & potestatem Angl' a power, p dic' Willielmo Vicecomite Stafford fore Expenditorem Angl' Paymaster exercitus illius. Quodq; in ordine ad animand' seipsos in prosecutione dictar' sceleratar' conjurationum conspiration̄ & prodition̄ & ad celand' & impediend' detectionem earundem & ad seipsos a Justicia & punitione securand' Conspiratores pred' participes & Confederatores sui usi fuissent multis impiis & diabolicis praxib' videlt' causassent sacerdotes suos administrare dic' Conspiratorib' juramentum taciturnitatis Angl' of secrecy, una cum eor' sacramento ac etiam causassent dic' Sacerdotes suos super Confessionib' dare absolutiones suas sub conditione quod ipsi concelarent dic' Conspirationem ac cum circa mensem Septembris tunc ult' preterit' Edmundbury Godfrey miles Justic' Pacis secundum juramenti & Officii sui debit' cepisset separal' examinationes & informationes concern̄ prefat' conspirationem & conjurationem dic' conspiratores seu eor' aliqui per advisamentum assensum consil' & instigationem resid' eor' incitassent & procurassent diversas personas in insidiis jacere & insequi prefat' Edmundbury Godfrey diversis dieb' ea intentione ad ipsum murdrand' quod postea per eos perpetrat' & effectum fuit (pro quib' quidem horridis criminib' & offensis Robertus Green, Henricus Berry & Laurentius Hill, postea attincti fuissent, ac Dominick Kelley & Girald, & alii fugam fecissent p eisdem) post quod quid' murdrum & antequam cadaver invent' fuit vel murdrum cognitum aliquibus nisi Participibus in eodem dic' person̄ false retuler' quod vivus fuit & privatim marital' & postquam cadaver' invent' fuit disperser' falsam & malitiosam relationem quod ipse seipsum murdrasset. Quod quidem murdrum commissum fuit ea intentione ad celand' & supprimend' evidentiam quam ipse cepisset ac de qua notitiam habuit & intimidand' & deterrend' Magistrat' & alios ab agendo in ulteriori detectione conspirationis & conjurationis pred' ea etiam intentione dic' Edmundbury Godfrey dum vivus fuit per eos ac participes & fautores suos minatus & deterritus fuit in ejus prosecutione inde quodq; de eor' ulteriori malicia scelerate machinati fuissent per quam plurimas suggestiones impon̄ imputationem & culpam pred' horridor' & detestabil' criminum super Protestantes ita quod perinde ipsimet evitarent punitiones quas juste meruissent & exponerent Protestantes scandalo magno & eos subjicerent prosecutioni & oppressioni in omnibus Regnis & patriis ubi Romana Religio recepta & professa fuit. Quodque omnia ill' proditiones crimina & offense prementionat' fuer' machinat' commiss. perpetrat' acta & facta per pred' Willielm' Comitem Powis, Willielm' Vicecomitem Stafford, Willielmum Dom̄ Petre, Henricum Dom̄ Arundel de Wardor, & Johannem Dom̄ Bellasis ac alios conspiratores pred' contr' Dom̄ Regem nunc Coronam & Dignitat' suas ac contr' Leges & Statuta hujus Regni secund' Lege & consuetudinem Parliament' impetit' fuer' ac inde debite onerat' & in Prisona pred' ea occasione detent' prout per Record' & process. inde int' Recorda Parliament' remanen̄ plenius apparet. Et iidem Major & Communitas ac Cives Civitat' London ulterius dicunt quod in Session̄ pred' Parliamenti dic' Dom̄ Regis nunc apud Westm' pred' per Prorogation̄ tent' super predict' vicesimum primum diem Octobris, Anno Regni dicti Domini Regis nunc tricesimo secundo supradict' in replicatione pred' mentionat' ad inchoation̄

ejusdem

eſuldem Seſſionis Dom̃ Rex nunc ex maxima regali cura & ſedulitate ſua
pro preſervatione Religionis Protestan̄ & ſubditor' a periculis per Papiſticas
Conſpirationes imminen̄ per ejus graciosam oration̄ ambab̄ domibus eſuſ-
dem Parliamenti ad tunc & ibidem fact' & allocut' inter alia recommenda-
vit Dom̃ & Commun̄ in Parliamento illo aſſemblat' ad proſequend ulterio-
rem examinationem Conſpiration̄ pred̄ cum ſtricta & impartiali inquiſitione
& eis tunc dixit quod ipſe non putavit ſeipſum neque ipſos ſecur' quouſque,
materia illa plenarie peragereetur. Ac ideo quod neceſſar' foret quod pred̄
Dom̃ in pred̄ priſona Turris London ad celerem triation̄ ſuam adducerentur
quod Juſticia fieret. Et iidem Pajor & Communitas ac Cives Civitat' London
ulterius dicunt quod poſtea in eadem Seſſion̄ Parliamenti utraque domus
Parliamenti illius in proſecution̄ dic̄ direction̄ Dom̃ Regis ſtrictam & impar-
tialem inquiſition̄ de pred̄ conſpiratione fecer' & ſuper inquiſition̄ ill' declara-
ver' quod fuiſſet horribilis Conſpiratio & Conjuratio per Papiſtas contra per-
ſonam dic̄ Dom̃ Regis & Gubernation̄ ſuam que tunc continuabant; ac Com-
mun̄ in eodem Parliamento aſſemblat' ulterius declaraverunt quod Conſpiratio
& Conjuratio ill' ſupportat' & proſecut' fuiſſent per poten̄ & irrequiet' moli-
mina & machinationes preſertim duran̄ tunc nuperis receſſib̄ Parliamenti &
poſtea in eadem Seſſione Parliamenti Dom̃ Spirituales & Temporales ac
Communes in eodem Parliamento aſſemblat' eorum humilem Supplicationem
Angl' Addreſs eidem Dom̃ Regi apud Weſtm' pred̄ fecer' & exhibuer' in forma
ſequen̄ videl' Quod ipſi Subditi Regie ſue Majeſtatis obſequentiſſimi & fide-
liſſimi Dom̃ Spirituales & Temporales ac Communes in tunc preſenti Par-
liamento illo aſſemblat' profounde ſenſibiles exiſten̄ de triſti & calamitoſa con-
ditione hujus Regni precipue per impias & horrendas Conſpirationes Papalis
Factionis cauſat' que non ſolum deſtructionem Regalis Perſone Regie ſue Ma-
jeſtatis verumetiam totalem ſubverſionem Gubernat' & vere Religion̄ in hoc
Regno Angl' ſtabilit' conſpiraviſſet & intendiſſet ac invenien̄ eaſdem deteſta-
biles machinationes adtunc obſtinate per eandem Factionem proſecut' tam fo-
vendo diviſiones inter Majeſtatis ſue fideles Subdit' Protestan̄ quam per omnes
al' nequiſſimas machinationes non obſtan̄ quamplurimis detectionibus inde
(magna dei miſericordia & mirabili providentia) tunc nuper in lucem prolat'
que omnia tremenda judicia tunc fuer' ſup hoc Regnum impenden̄ p pluribus &
gravibus ſuis peccatis quam meritiſſime ac alit' humana ratione evitari nequi-
bant quam per benediction̄ Dei particularem ſuper conſultationes & conamina
magni Concilij ipſius Dom̃ Regis tunc in Parliamento aſſemblat' in omni
humilitate Regie ſue Majeſtati ſupplicaver' quod per Proclamation̄ ſuam
Regalem dies ſolempnit' foret dedicat' in quo tam ipſi quam omnes ipſius
Dom̃ Regis Subdit' per jejun̄ & preces Deo omnipotenti reconciliationem
conarentur. Ac cum cordibus humilibus & penitentibus eum implorarent
per ejus potentiam & bonitatem ad judicia ill' divertend̄ & ad impia conſilia
& machinationes inimicorum ſuorum fruſtrand̄ ad corda fidelium Protestan̄
Subdit' dic' Dom̃ Regis unien̄ & ad miſericordiam ſuam & Evangelij ſui
lumen eidem Domino Regi & dictis Subdit' ſuis & eor' Poſteritat' continuand̄
ac precipue ad abundantes benedictiones ſuas ſuper ſacram Majeſtatem ipſius
Dom̃ Regis & tunc preſen̄ Parliament' impendend̄ quod conſultationes &
conamina eor' honorem incolumitatem & proſperitatem Regie ſue Majeſtati
ac Populo ſuo producerent & ſuperinde dictus Dominus Rex nunc duran̄
dicta Seſſione Parliamenti ſcilicet ſecundo die Decembris Anno Regni ſui tri-
ceſimo ſecundo ſupradicto per Proclamationem ſuam Regalem ſub magno ſi-
gillo ſuo Angl' ſigillat' geren̄ dat' apud Weſtm' eiſdem die & anno recitando
quod cum Dom̃ Spirituales & Temporales ac communes in Parliamento
illo aſſemblat' per eor' Supplication̄ Angl' Addreſs eidem Domino Regi ex-
hibit' notum ei feciſſent quod ipſi profunde ſenſibiles fuer' de triſti & cala-
mitoſa conditione hujus Regni per impias & horrendas Conſpirationes Papa-
lis Factionis cauſat' que non ſolum deſtructionem Regalis Perſone Regie ſue
Majeſtatis verumetiam totat' ſubverſionem Gubernat' & vere Religionis apud
ipſum Regem & Subditos ſuos ſtabilit' conſpiraviſſet & intendiſſet quodque
eedem deteſtabiles machinationes adtunc obſtinate per eandem Factionem pro-

ſecut'

secut fuer' tam fovendo divisiones int ejus fideles Subdit Protestan quam per omnes al' nequissimas machinationes non obstan quamplurimis detectionibus inde (magna Dei misericordia & mirabili providentia) tunc nuper in lucem prolat que omnia tremenda judicia tunc fuer' super eundem Dom Regem & dictos Subdit suos impenden pro pluribus & gravibus suis peccatis quam meritissime ac alit humana ratione preveniri nequibant quam per benedictionem Dei particularem super consultationes & conamina magni Concilij ipsius Dom Regis tunc in Parliamento assemblat eidem Domino Regi humillime supplicassent quod dies maxime solempnit foret dedicat in quo Rex ipsemet & omnes Subditi sui fideles per jejunium & preces Deo omnipotenti reconciliationem conarentur ac cum cordibus humilibus & penitentibus eum imploraren per ejus potentiam & bonitatem ad judicia illa divertend & ad impia consilia & machinationes inimicorum ipsius Dom Regis & dict' Subdit suor' frustrand ac corda fidelium Protestan Subdit dict' Dom Regis uniend & misericordiam suam & Evangelij sui lumen eidem Domino Regi & dictis Subdit suis & eor' Posteritat continuan ac precipue ad abundantes benedictiones suas super ipsum Dom Regem & tunc presen Parliament impendend quod consultationes & conamina eor' honorem incolumitatem & prosperitatem dicto Domino Regi ac populo suo producerent idem Dominus Rex ad illam eor' humilem requisitionem promptissime inclinavit ac p illam ejus Regalem Proclamation mandavit generale & publicum Jejunium per totum hoc Regnum observari in tali modo quali postea per eandem Proclamationem fuit direct' & prescript ita quod tam idem Dominus Rex quam populus suus preces & supplicationes suas Deo omnipotenti emitterent ad & pro propositis pred ac ea intentione quod tam Religiosum Exercitium ad unum & idem tempus performaretur dictus Dominus Rex per Proclamation ill' publicavit & declaravit omnibus Subditis suis amantibus ac stricte precepit & mandavit quod die Mercurij existen vicesimo secundo die Decembris tunc instan jejunium ill' religiose observat & celebrat foret per Regnum suum Angl' Dominium Wallie & Willam Berwici super Twedam & ut idem cum omni decentia & uniformitate performaretur idem Dominus Rex per advisamentum reverend Episcopor' suor' componi imprimi & publicari direxerat talem formam Divini Servicij qual' ipse apt uti censuerat in omnibus Ecclesiis & Locis ad tempus pred & Episcopis suis dederat in mandatis ad ill' congruent dispergend. Que omnia idem Dominus Rex per Proclamationem suam pred reverent & decent observari expresse precepit & mandavit per omnes Subdit suos amantes sicut favorem Dei omnipotentis respexer' ac iram & indignation ejus contra hanc terram evitarent & sub pena subeundi tales punitiones qual' dictus Dominus Rex juste infligere posset super omnes qui tam religiosum Officium contemnerent seu negligerent prout per irrotulament ejusdem Proclamationis in Cur' Cancellar' ipsius Dom Regis de Recordo remanen plenius apparet. Qui quidem dies Jejunij secundum formam & effect' Proclamat pred debite & solempnit observat & celebrat fuit in & per totum hoc Regnum Angl' ac precipue apud London pred in Parochia Sancti Michaelis Bassishaw. Quodq in eadem Sessione Parliamenti ult mentionat Communes hujus Regni in eodem Parliamento assemblat resolution fecerunt procedere ad triationem pred Dominor' in Prisona Turris London tunc existen sic ut prefertur impetit & Statim incipere cum prefat Vicecomite Stafford ac noticiam inde Dominis Parliamenti illius tunc deder' & eos requisiver' ad convenien diem pro triatione ejusdem Vicecomitis Stafford appunctuand & superinde pred Vicecomes Stafford de altis proditionibus & proditoriis conspirationibus & conjurationibus pred unde ipse ut prefertur impetit fuit per Dominos Temporales in eodem Parliamento convent ad prosecution Commun hujus Regni in Parliamento illo assemblat in eadem Sessione Parliamenti triat convict' & debita juris forma attinct' fuit prout per Record & process. inde inter Recorda Parliament remanen plenius apparet posteaq in eadem Sessione Parliamenti Willielmus Scrogs Miles tunc Capital' Justic' Domini Regis ad placita coram ipso Rege tenend assign per Communes hujus Regni Angl' in eodem Parliamento assemblat coram magnatibus & proceribus ejusdem Regni in Parliamento illo

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convocat & convenit ſecundum legem & conſuetudinem Parliamenti accuſat & impetit fuit de alta p̄ditione & aliis magnis criminibus & malegeſturis inter alia quod ipſe dictus Willielmus Scrogs tunc exiſtens Capital' Juſtic' Cur' Domini Regis coram ipſo Rege p̄ditorie & nequit conat fuiſſet ſubvert Leges fundamentat & ſtabilit Religion' hujus Regni Angl' ac loco inde introducere Papiſmum Angl' Popery & Arbitrariam & Tyrannicam Gubernationem contra Legem, quod ipſe declaraſſet p̄ diverſa p̄ditoria & improba verba opiniones judicia p̄rares & facta: Ac etiam quod cum fuiſſet horribilis & diabolica conſpiratio machinat & proſecut per Papiſtas p̄o murdrando Domin' Regem nunc ſubvertendo Leges & Gubernation' hujus Regni & p̄o deſtruendo Religionem Protestan' in eodem Regno, que omnia dictus Willielmus Scrogs bene ſciviſſet in quantum ipſemet non ſolum triaſſet verum etiam judicium reddidiſſet contra ſeparat hujuſmodi delinquentium, nihilominus dictus Willielmus Scrogs ad diverſa tempora & loca tam in Cur' ſeden' quam alit palam defamaſſet & ſcandaliz̄aſſet ſeparat de teſtibus qui p̄obaſſent dictas p̄ditiones contra diverſos de conſpiratoribus & dediſſent evidenciam contra diverſas alias perſonas que tunc fuer' minime triat ac conatus fuiſſet defamare Angl' to diſparage cor' evidenciam & adimere credenciam eorum per quod quantum in ſe fuit p̄ditorie & nequit ſuppreſſiſſet & ſuffocaſſet detectionem dicte Papalis conſpirationis ac animaſſet conſpiratores (ad proceden' in eadem) in magnum & manifeſtum periculum ſacre vite dicti Domini Regis nunc & bene ſtabilit Gubernation' & Religionis hujus Regni Angl' p̄out per Record' inde inter Record' Parliament remanen' plenius apparet. Ac etiam in eadem Seſſione Parliamenti Domini Spirituales & Temporales ac Communes in eodem Parliamento aſſemblat ſe declaraver' eis manifeſt' eſſe quod ad tunc fuit & per diverſos Annos tunc ult elapſ. fuiſſet horrenda & p̄ditoria conſpiratio & conſultatio machinat & proſecut per ill' de Papali Religione in Regno Hiberniæ p̄o trucidatione Angl' Maſſacring, Anglor' & ſubvertion' Religionis Protestan' & antique ſtabilit gubernationis Regni illius de qua quidem horrenda & proditoria conſpiratione & conjuratione Richardus Power Comes Tyrone in Regno Hiberniæ ad eandem Seſſion' Parliamenti per Communes hujus Regni Angl' in eodem Parliamento aſſemblat coram Magnatibus & p̄ceribus ejuſdem Regni Angl' in Parliamento illo convocat & convenit ſecundum Legem & conſuetudinem Parliamenti impetit fuit ac inde debite onerat & Priſone Dom' Regis de le Gate-houſe Weſtm' ea Occaſione Commiſſus fuit p̄out per Record' inde inter Recorda Parliament remanen' plenius apparet quodque tam Domin' quam Communes in dicto Parliamento aſſemblat in eadem Seſſione Parliamenti fuer' p̄parantes billas ſecundum curſum Parliament in Leges inactitand' p̄o p̄ſervatione Domini Regis nunc & ſubditorum ſuorum p̄teſtan' contra p̄ditorias conſpirationes & conjurationes p̄dicta pendent' quibus quidem Separalibus impetitionibus verſus eundem Richardum Power & dictum Willielm' Scrogs ac p̄dict' Willielm' Comitem Powis, Henricum Dominum Arundel de Wardour, Willielm' Dom' Petre & Johannem Dom' Bellaſis minime determinat ac eiſdem Willielm' Comite Powis, Henrico Domino Arundel de Wardour, Willielm' Dom' Petre, Johanne Dom' Bellaſis & Richardo Power in priſon' Domini Regis ex cauſis p̄d' ut p̄fertur exiſtent' idem Parliament ſuper p̄d' decimum diem Januarij Anno Regni dicti Dom' Regis nunc triceſimo ſecundo ſuprad'to prorogat fuit p̄out p̄d' Attorn' dict' Dom' Regis nunc Generalis, ſuperius inde allegavit abſq; aliqua triatione dictor' Willielm' Comit' Powis, Henric' Dom' Arundel de Wardour, Willielm' Dom' Petre, Johan' Dom' Bellaſis, Willielm' Scrogs & Richard' Power ſeu eorum alicujus de altis p̄ditionib' & al' p̄miſſis unde ipſi reſpective ut p̄fertur impetit fuer' (ac qui aliter quam in Parliament inde triari non potuer') fac' ſive habit ac antequam hujuſmodi bille in Leges inactitat fuer' Que quidem Oratio dicti Dom' Regis ac Declarationes & proceſſus Dom' & Commun' Parliamenti illius duran' dicta Seſſione ejuſdem Parliam't ut p̄fertur fac' ante eandem Prorogationem Parliamenti illius publicat fuer' videlt apud London p̄d' in p̄dicta Parochia Sancti Michaelis Baſſiſhaw ratione quorum quidem p̄miſſor' Cives & Inhabitan' p̄d' Civitatis London fideles ſubdit dicti Dom'

Regis nunc existen maxime perteriti & in animis affecti ac quam plurimum inquietat fuer' profundo sensu & apprehentione magnor periculor persone Dom̃ Regis nunc & gubernationi sue hujus Regni ac Religioni Protestan & professoribus ejusdem occasione conspiration pred impenden & imminen non aliter (prout per Dom̃ Spirituales & Temporales ac Communes in dicto Parliamento assemblat in supplicatione sua pred per Dom̃ Regem in proclamat pred ut prefert publicat affirmat humana ration evitand quam per Benedictionem Dei particularem super consultationes & conamina ejusdem Parliamenti, Quidam Cives & Inhabitantes ejusdem Civitatis, nomine Civium & Inhabitantium dict' Civitatis ante petitionem inde in predicto placito pred Attorn̄ General superius replicando placitat ipec' fac' seu fieri ordinat scil' pred decimo tertio die Januarij Anno Regni dict' Dom̃ Regis nunc tricesimo secund suprad' Patient' Ward Miles, tunc Major Civitatis London & Alderm̃ dict' Civitatis ac Communiariis sive Civib de Com̃ concilio ejusdem Civitatis in Communi Concilio adtunc in predicta Camera Guildhall' ejusdem Civitatis in Parochia St. Michaelis Bassishaw pred secund consuetudinem dicte Civitatis assemblat exhibuer quandam Petitionem continen quod ipsi Cives & Inhabitant Civitat London profunde sensibiles existen de malis & exitiis super hanc Nationem in generali ac ill' Civitatem London in particulari pendeñ in respect' periculi persone Dom̃ Regis nunc Religion Protestan & bene Stabilit Gubernation sue per continuat infernales & diabolicas machinaciones Papistar & alior adherentium suor ac scientes nullam viam (sub Deo tam effectual' ad preservand Dom̃ Regem ac Cives & Inhabitant ill' ab extrem ruina & destructione minat quam per celerem Sessionem tunc presentis Parliamen cujus inopinata prorogatio magnopere addidit & augebat justos timores & suspiciones Animor dictor Petitionarior ipsi idem Petitiores obsecra ver eidem Com̃ Concilio sic prefertur assemblat ad informand Regiam Majestatem de ill' eor timoribus & apprehensionibus ac quod fuit humile & fervens desiderium tam eor petitor quam ipsor Majoris & Aldermanor ac Communar de Com̃ Concilio illo quod Regie sue Majestati placeret pro totali frustratione impior & sanguinolentor propositor Inimicor suor ad permittend ill' tunc presens Parliamentum quod extitit prorogat usque vicesimum diem tunc instan Januarij adtunc assemblare & sedend continuare quousque effectualit securaret hoc Regnum contra Papism ac reformaret Angl' redressed multiplicia gravamina sub quibus tunc gemuit & pro immediata securitate sua quod idem Major & Alderm̃ ac Communiarij de Com̃ Concilio ill' ordinarent quodcunq aliud quod necessar & expedien eis videretur in illo Tempore periculi imminen pro incolumitate magne Civitatis illius. Et quia per legem terre hujus Regni Angl' Licitum est Subdit Dom̃ Regis in angustis & difficultatib suis ad humiliat supplicand Dom̃ Regi pro remedio congruo in ea parte habend pred die Jovis decimo tertio die Januarij Anno Regni dict' Dom̃ Regis nunc tricesimo secundo suprad' pred' Patient Ward Miles, tunc Major pred Civitatis London & Alderm̃ ejusdem Civitat (scil' Thomas Alleyn Miles, & Bar Johannes Fredericke Miles, Johannes Lawrence Miles, Georgius Waterman Miles, Josephus Sheldon Miles, Jacobus Edwards Miles, Robertus Clayton Miles, Johannes Moore Miles, Guilielmus Pritchard Miles, Henricus Tulse Miles, Jacobus Smith Miles, Robertus Jeffrey Miles, Johannes Shorter Miles, Thomas Gould Miles, Guilielmus Rawsterne Miles, Thomas Beckford Miles, Johannes Chapman Miles, Simon Lewis Miles, Thomas Pilkinton Arm̃ & Henricus Cornish Arm̃ ac Communiarij seu Cives de Com̃ Concilio dict' Civitatis in Com̃ Concilio suo infra eandem Civitatem (scil') in pred Camera Guild-hall Civitatis illius ad tunc secund consuetudinem dict' Civitatis Assemblat vota & Suffragia sua ex animis Dom̃ Regi perfidelib & pro satisfaction Civium & Inhabitant ejusdem Civitat qui petitionem eis in forma pred exhibuissent pro allevatione timoris & apprehensionis & inquietudinis illor ac ea intentione quantum in se fuit pro preservatione persone Dom̃ Regis nunc & gubernation sue hujus Regni Angl' & Religionis Protestan deber ac nemine contradicente agreaver & ordinaver quod quedam petitio sub nomine ipsor Majoris Alderm̃ & Commun Civit London in Com̃ Concilio assemblat

aſſemblat dict' Dom̃ Regi nunc exhibit fuit cujus quidem petitionis tenor ſequitur in his Anglicanis verbis, viz. To the Kings moſt Excellent MAJESTY, The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of *London* in Common-Council Aſſembled, moſt humbly ſheweth, That your Majeſties Great Council in *Parliament*, having in their late Seſſion, in purſuance of Your Majeſties direction, entred upon a ſtrict and impartial inquiry into the Horrid and Execrable Popiſh Plot, which hath been for ſeveral Years laſt paſt, and ſtill is carried on, for the Deſtruction of Your Majeſties Sacred Perſon and Government, and extirpation of the Proteſtant Religion, and the utter Ruine of Your Majeſties Proteſtant Subjects: And having ſo far proceeded therein, as juſtly to attaint, upon full Evidence, one of the five Lords Impeached for the ſame, and were in further Proſecution of the remaining four Lords, and other Conſpirators therein: And as well the Lords Spiritual and Temporal, as the Commons in Your ſaid Parliament Aſſembled, having declared, That they are fully ſatisfied that there now is, and for divers Years laſt paſt, hath been a Horrid and Treaſonable Plot and Conſpiracy contrived and carried on by thoſe of the Popiſh Religion in *Ireland*, for Maſſacring the *Engliſh*, and Subverting the Proteſtant Religion, and the Ancient Eſtabliſhed Government of that Kingdom: And Your ſaid Commons having Impeached the Earl of *Tyrone*, in order to the bringing him to Juſtice for the ſame, and having under Examination, other Conſpirators in the ſaid *Iriſh* Plot: And Your ſaid Commons having likewiſe Impeached Sir *William Scrogs*, Chief Juſtice of Your Majeſties Court of *Kings-Bench*, for Treaſon, and other great Crimes and Miſdemeanors, in endeavouring to ſubvert the Laws of this Kingdom by his Arbitrary and Illegal Proceedings; and having voted Impeachments againſt ſeveral other Judges for the like Miſdemeanors, your Petitioners, conſidering the continual hazards to which your ſacred Life and the Proteſtant Religion, and the Peace of the Kingdom are expoſed, while the hopes of a Popiſh Succeſſor gives Countenance and Encouragment to the Conſpirators, in their wicked Deſigns. And conſidering alſo the diſquiet and dreadful Apprehenſions of your good Subjects, by reaſon of the Miſeries and Miſchiefs which threaten them on all parts, as well from Foreign Powers, as from the Conſpiracies within your ſeveral Kingdoms, againſt which no ſufficient remedy can be provided but by your Majeſty; and your Parliament were extreamly ſurpriſed at the late Prorogation, whereby the proſecution of the publick Juſtice of the Kingdom, and the making the Proviſions neceſſary for the Preſervation of your Majeſty, and your Proteſtant Subjects have received an interruption. And they are the more affected herewith, by reaſon of the Experience they have had of the great Progreſs which the emboldned Conſpirators have formerly made in their Deſigns, during the late frequent receſſes of Parliament; but that which ſupports them againſt Deſpair, is, the hopes they derive from your Majeſties Goodneſs, that your intention was, and does continue by this Prorogation to make way for your better concurrence with the Counſels of your Parliament. And your Petitioners humbly hope that your Majeſty will not take Offence that your Subjects are thus zealous, and even impatient of the leaſt delay of the long hoped for Security, whilſt they ſee your precious Life invaded, the true Religion undermined, their Families and innocent Poſterity likely to be ſubjected to Blood, Confuſion and Ruine, and all theſe dangers encreaſed by reaſon of the late Endeavours of your Majeſty and your Parliament, which have added Provocation to the Conſpirators, but have had little or no effect towards ſecuring againſt them; and they truſt your Majeſty will graciouſly accept of this Diſcovery, and deſire of their Loyal Hearts to preſerve your Majeſty, and whatever elſe is dear to them, and to ſtrengthen your Majeſty againſt all Popiſh and pernicious Councels, which any ill affected Perſons may preſume to offer: They do therefore moſt humbly pray, that your Majeſty will be graciouſly pleaſed (as the only means to quiet the Minds, and extinguiſh the Fears of your Proteſtant People, and prevent the eminent Dangers which threaten your Majeſties Kingdoms, and particularly this your great City, which hath already ſo deeply ſuffered for the ſame) to permit your ſaid Parliament to ſit from the day to which they are Prorogued, until by their Counſels and Endeavours thoſe good Remedies ſhall be provided, and thoſe juſt Ends attained, upon which the ſafety of your Majeſties Perſon, the preſervation of the Proteſtant Religion, the Peace and Settlement of your Kingdoms,

and the welfare of this your ancient City, do so absolutely depend; for the pursuing and obtaining of which good Effects, your Petitioners unanimously do offer their Lives and Estates. And shall ever pray, &c. Ac adtunc & ibidem ulterius agreaver' & ordinaver' quod Petitio ill' post presentation' inde eidem Dom' Regi impressa foret per talem personam qual' dictus tunc Major Civitat' London pred' appunctuaret. Que quidem Petitio sic fuit imprimi ordinat' ea intentione quod Publicatio falsor' rumor' & relation' de & concernen' pred' Petition' dicto Domino Regi exhibit' evitaretur inimici Domini Regis & Conspiratores pred' a procedendo in conspiratione sua pred' deterrerentur perturbationes quas boni & fideles subiti dicti Domini Regis nunc in animis suis ex causis predictis concepissent alleviarentur & Cives & Inhabitan' ejusdem Civitat' melius scirent quid factum fuisset in dicto Communi Concilio de materia in Petitione pred' eidem Communi Concilio ut prefertur exhibit' content'. Quodq; pred' Petitio dicto Dom' Regi sic presentari agreat' postea scilicet pred' decimo tertio die Januarij Anno tricesimo secundo supradicto eidem Dom' Regi humillime presentat' fuit videlicet apud London pred' in predicta Parochia Sancti Michaelis Bassishaw ac postea scil' decimo quinto die ejusdem mensis Januarij per Samuelem Roycroft (quem dictus Paciens Ward tunc Major Civitat' London ad inde appunctuavit) impressa fuit juxta ordinem pred' in ea parte fact' videlicet apud London pred' in Parochia predict'. Que quidem Petitio & impressio inde in forma predict' & ea ex causa pred' fact' sunt eedem Petitio & impressio & publicatio inde in pred' placito pred' Attorn' Generalis superius replicando placitat' spec'. Absque hoc quod aliqua Petitio de vel concernen' Prorogation' Parliamenti pred' fact' ordinat' publicat' seu impress. fuit alit' vel alio modo quam iidem Major & Communitas ac Cives Civitat' London superius allegaver' prout idem Attorn' Generalis pro dicto Domino Rege superius suppon' & hoc similiter parat' sunt verificare unde iidem Major & Communitas ac Cives Civitat' London non intendunt quod ipsi per aliqua preallegat' pred' Libertat' Privileg' & Franches. fore de seipsis unum Corpus Corporat' & politicum in re facto & nomine per nomen Majoris & Communitat' ac Civium Civitat' London ac per idem nomen placitare & implacitari respondere ac responderi per ipsos superius ut prefertur clamat' forisfecer' ac ut prius Pet' judicium & quod Libertat' Privileg' & Franches. ill' eis & Successoribus suis imperpetuum deinceps allocentur & adjudicentur ac quod ipsi quoad premiss. ill' ab hac Cur' dimittantur, &c.

Et quoad exit' int' Dom' Regem & Major' & Communitat' ac Cives Civitat' London superius in forma pred' Junct' idem Attorn' dict' Dom' Regis nunc general' dicit quod Major & Communitas ac Cives Civitat' London pred' sunt partes Defendentes vers. quos idem Attorn' dicti Dom' Regis nunc general' prosecut' est Information' pred'. Et ea de causa pet' bre Vic' Com' Hertf. (existen' Com' Civit' pred' prox' adjacen') dirigend' de Venire fac' coram Dom' Rege duodecim, &c. de vicineto Ville de Hertf. in Com' pred' que quidem Villa de Hertf. in Com' pred' est Villa & Visn' in Com' Hertf. prox' adjacen' Civit' London pred'. Et quia pred' Major & Communitas ac Cives Civitat' pred' hoc non dedicunt ideo precept' est Vic' Com' Hertf. pred' quod Venire fac' coram Dom' Rege a pred' die Sancti Michaelis in tres septiman' ubicun', &c. duodecim, &c. de vicineto pred' per quos, &c. Et qui, &c. Ad recogn', &c. quia tam, &c. Ide' dies dat' est tam prefat' Roberto Sawyer Miles qui sequitur, &c. quam predict' Majori & Communitat' ac Civibus Civitat' London predict', &c. Et pred' Attorn' dicti Dom' Regis nunc general' quoad placitum prefat' Major' & Communitat' ac Civium Civitat' London pred' superius rejungendo placitat' pet' inde diem interloquendi coram dicto Dom' Rege a die Sancti Michaelis in tres septiman' ubicunq;, &c. Et ei conceditur, &c. Idem dies dat' est prefat' Majori & Communitat' ac Civibus Civit' London pred', &c. ad quas quidem tres septim' Sancti Michaelis coram dicto Dom' Rege apud Westm' venit tam prefat' Robertus Sawyer Miles qui sequitur, &c. quam pred' Major & Communitas ac Cives Civitat' London pred' per Attorn' suum pred'. Et pred' Vic' Com' Hertf. non mis. inde bre ideo sicut alias precept' est Vic' Com' Hertf. pred' quod Venire fac' coram dicto Dom' Rege in octab' Sancti Hillar' ubicunq;, &c. duodecim, &c. de vicineto de Villa Hertf. pred', &c. Per quos, &c. Et qui, &c. Ad recogn',

&c.

&c. Quia tam, &c. Idem dies dat' eſt tam præfat' Roberto Sawyer Militi qui ſequitur, &c. quam prædict' Majori & Communitat' ac Civibus Civitat' London, &c.

Et præd' Attorn' dict' Dom' Regis nunc Generat', qui, &c. quoad placitum ipſorum Major' & Communitat' ac Civium Civitat' præd' quoad confectionem & publicationem legis pro levatione denariorum de perſonis ad publica Mercata infra Civitat' præd' tent' cum victualibus & proviſionibus ibidem vendend' acced' ac exactionem & levationem hujuſmodi denar' ſuperius fieri ſuppoſit' per ipſos Majorem & Communit' ac Cives ſuperius rejungendo placitat' pro eodem Dom' Rege nunc dicit quod per aliqua per ipſos ſuperius inde allegat' libertat' privileg' & franchef. fore de ſeipſis unum corpus corporat' & politicum in re facto & nomine per nomen Majoris & Communitat' ac Civium Civitat' London ac per idem nomen placitare & implacitari reſpondere ac reſponderi pet' ipſos ſuperius ut præfertur clamat' eiſdem Majori & Communitat' ac Civibus allocari non debent quia protestando quod ipſi præd' Major & Communit' ac Cives Civitat' London præd' decimo ſeptimo die Septembris, Anno viceſimo ſexto ſuprad'co in Replicatione præd' mentionat' necnon contiue poſtea & a tempore cujus contrar' memoria hominum non exiſtit minime ſciſit' fuer' ſeu adhuc ſciſit' exiſtunt de & in publicis Mercatis præd' in dominico ſuo ut de feodo, nec per totum idem tempus ſumptibus ſuis ppriis pviderunt ſeu pvidere conſuever' & debuer' fora Mercatoria ſive loca ubi hujuſmodi Mercata tent' fuer' quotieſcunq; neceſſe fuit Stallas, Stationes, & alias accommodationes p perſonis ad eadem Mercata venien' cum victualibus & proviſionibus ibidem vendend' pro meliori & magis convenien' vendicon' & expoſicon' eorundem prout præd' Major & Communitas ac Cives ſuperius rejungendo allegaver' proteſtandoq; etiam quod dict' præd' per actum ſive ordination' præd' ut præfertur ſolvi ordinat' præd' tempore confectionis ordinationis illius & extunc hucuſq; non fuer' rationabiles, nec adhuc rationabiles exiſtunt, prout iidem Major & Communitas ac Cives ſuperius ſimiliter allegaverunt. Pro placito tamen idem Attorn' dict' Domin' Regis nunc Generalis dicit quod per quendam actum in Parliamento dict' Dom' Regis nunc tent' apud Weſtmonaſter' per ſeparales Prorogationes decimo quarto die Februarij, Anno Regni dict' Dom' Regis nunc viceſimo ſecundo, inter alia inactitat' fuit ad finem quod apti & commodi loci infra dictam Civitat' & Libertas ejuſdem, extra poſit' & appunctuat' ſorent pro reedificand' & cuſtodiend' Mercata ampliori convenientia quam antea fuer' ita quod principales ſtrate non forent impedit' Angl' peſtred & obſtruct' perinde prout antea conſuet' fuit. Et quod Regale Excambium, Guihald, le Seſſions-Houſe in le Old-Baily & comman' Gaole & Priſone infra præd' Civitat' forent amplificat' & fact' magis commodi pro publicis uſu & ornament' Civitatis, & melius ſecurit' a periculo & caſualitate conflagrationis. Et quod aliqua convenien' diſtantie, interval' & circuitus fundi forent relict' inter Regal' Excambium, & alias domos edificand' infra Civitat' præd' quod Major, Aldermanni, & Commun' Civitat' præd' in Commun' Concilio aſſemblat' impenderent, Angl', ſhould and might imploy, & per Actum præd' Authorizat' fuer' impendere talia loca & portion' Fundi infra Civitat' præd' & Libertat' ejuſdem prout per & cum dicti Dom' Regis nunc approbation' tunc fuer' vel ante decimum diem Martij, milleſimo ſexcenteſimo ſexageſimo nono, forent extrapoſit' & adjudicat' neceſſar' & convenien' tam pro publicis Mercatis ibidem, quam etiam pro ornamento amplificatione & convenien' præd' Regal' Excambij, & aliorum locorum' præmentionat' & cujuſlibet vel alicujus eorundem reſpective & ad intention' quod rationabilis ſatisfactio dar' foret Proprietar' & aliis habent' aliquem ſtatum ſive intereſſe in fundis & locis que fuiſſent vel forent extrapoſit', capiend' & occupand' pro publicis locis Mercatoriis præd' Major', Alderman' & Commun' per ipſos vel alios in ea parte fore appunctuat' & authorizat' tractar' & agrearent cum Proprietar' & al' intereſſat' in eiſdem & in caſu voluntarie reculationis ſive alicujus talis inhabilitatis ſive impediment' quat' in quodam al' Actu Parliamenti in eodem Actu ſpecificat' pro re-edificatione Civitat' London, nuper antea fact' mentionat' fuer' ſeu alius incapacitat' cujuſcunq; in Proprietar' inde vel al' intereſſat' in eiſdem ad tractand' &

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& agreand pred Major & Cur' Alderman forent & fuer' per Actum pred authorizat & requisit causare Jur' fore impannellat in tal modo & forma prout per Actum pred direct' & appunctuat fuit, ita quod null duo Jur' pred sic fore impannellat venirent ex una & eadem Warda adjudicare & assidere qual compensation & satisfaction in quibuslibet casibus pred forent adjudicat & dat respectivis Proprietar' & aliis interessat in fundis & locis sic extraposit capiend & occupand pro aliquibus usubus vel propositis ut prefertur in prosecutione ejusdem Actus secundum tal' eorum respectivos status & interess. Et ulterius inactitat fuit quod pro omnimodis Carbonibus que ab & post primum diem Maij, millesimo sexcentesimo & septuagesimo, & ante vicesimum nonum diem Septembris, qui foret in Anno Dom millesimo sexcentesimo octogesimo septimo, forent importat & abduct' in pred Portum Civitat London, seu Rivum Thamesis, infra Libertat Civitat pred super eundem Rivum solut foret per viam Impositionis, superinde secund ratas postea mentionat (videl') pro omnibus tal Carbonibus qual ibi importat & induct' forent ab & post primum diem Maij, millesimo sexcentesimo & septuagesimo, & ante vicesimum quartum diem Junij, millesimo sexcentesimo septuagesimo septimo, solut foret pro qualibet Celdar' seu Tonna inde duos solidos ultra Imposition duodecim denar' pro Celdar' seu Tonna per pred Actum pro re-edificatione Civitat London appunctuat solvend. Et pro omnibus tal Carbonibus que ibidem importat & induct' forent ab & post predict' vicesimum quartum diem Junij, millesimo sexcentesimo septuagesimo septimo, & ante pred vicesimum nonum diem Septembris, millesimo sexcentesimo octogesimo septimo, solut forent pro qualibet Celdar' sive Tonna inde tres solidos, & iidem vigore Actus pred forent collect' levat & solut in tali forma & modo in omni & quolibet respectu, prout in & per pred priorem Actum fuit limitat & appunctuat pro collectione & levatione debit duodecim denar' pro Celdar' sive Tonna Carbonum imposit per priorem Actum pred & omnes & quaslibet potestat Authoritat, Directiones & Provision in vel per pred priorem Actum mentionat vel provis. pro levatione & collectione inde. Omnesq quidem denar' sic recipiend super comput pred respectivarum Imposition seu earum ulterius de tempore in tempus forent solut in receptu Camere Civitat London, & abinde forent emanat & solut secundum directionem & appunctuation pred Actus de Anno vicesimo secundo supradicto & non aliter. Et pred Camera Civitat London, staret & onerat foret cum toto resid denar' pred ibidem solut qui non sic emanat forent & solut. Et ulterius inactitat fuit quod omnes & quelibet summa & summe monet que levat foret super reception separal' & respectivarum Imposition pred sive per tal' additional' debit in casu concealament inde prout per pred priorem Actum appunctuat fuit foret occupat & disposit modo & forma sequen (videl') una quarta pars omnium denarior' que ab & post pred primum diem Maij, millesimo sexcentesimo & septuagesimo & ante pred vicesimum quartum diem Junij, milesimo sexcentesimo septuagesimo septimo forent levat sive solubil super reception pred Imposition duorum solid pro qualibet Celdar' vel Tonna Carbonum seu in casu concelament inde ut prefertur foret occupat & disposit pro & erga satisfaction pro fundis extraposit & occupat pro amplificatione Stratarum confection Wharfarum & Portuum publicorum Mercatorum locorum & aliorum publicorum usuum tam in Actu ill' quam in Actu precitat mentionat & appunctuat & quod una medietas omnium denar' qui ab & post vicesimum quartum diem Junij, millesimo sexcentesimo septuagesimo septimo forent levat seu solubil' super pred Imposit trium solid pro Celdar' vel Tonna Carbonum de tempore in tempus foret occupat & disposit pro satisfactione pro fundo extraposit, & occupat ut prefertur, & tal' al' publicis usibus & proposit qual' in actu ill' & in Actu prerecitat fuer' mentionat & appunctuat prout per eundem Actum de anno vicesimo secundo supradicto inter al' plenius liquet & apparet. Et pred Attorn dict' Dom Regis nunc general' qui, &c. pro eodem Dom Rege nunc ulterius dicit quod virtute actus illius iidem Major & Communitas ac Cives Civitat London pred, ante confectionem & publicationem legis pred, scilicet primo die Septembris, Anno Regni dicti Dom Regis nunc vicesimo sexto supradicto apud London pred in Parochia & Warda pred habuer' & receper' pro debito & vectigali pred de duobus solidis pro qualibet Celdar' sive Tonna Carbonum

bonum in Civitat London, sive Portum ejusdem importat ingent denariorum summam ad proposita pred. Et ulterius idem Attorn Dom Regis nunc general', qui, &c. pro eodem Dom Rege nunc dicit quod Major & Communitas ac Cives Civitat London, absque aliquo jure, titulo, sive authoritat quibuscunq; premissis pred non postantibus pred die Jovis scilicet, pred decimo septimo die Septembris, Anno Regni dict' Dom Regis nunc vicesimo sexto supradict' in eorum Commun Concilio adtunc tent in Camera Guildhall Civitat London pred, videlicet, in Parochia Sancti Michaelis Bassishaw London, insimul assemblat fecer condixer & publicaver pred Regem per ipsos de facto inactiat pro levatione separat denar summar pred de omnibus Subditis ac Ligeis Dom Regis nunc tam liberis quam non liberis hominibus Civitat pd & aliis extraneis ad publica Mercat infra Civit pred tent accedent cum victual & provisionibus suis ibidem vendend ac eadem separat denar summas sub colore & pretextu legis pred sic per ipsos pro eorum privato lucro & commodo illegaliter fact' & absque aliquo alio Jure, Titulo, sive Authorit quibuscunque per pred spatium septem annorum post pred decimum septimum diem Septembris, Anno vicesimo sexto supradicto prox' sequen & amplius apud London pred, in Parochia pred de omnibus dict' Dom Regis Ligeis & Subditis ad pred publica Mercata per totum tempus pred infra Civitat pred tent cum victual' & provisionibus ibidem vendend accedentibus exeger & levaver & erigi & levari fecer & denar ill ad eorum proprios usus converterunt & disposuerunt in subversion boni regiminis & Gubernation Civitatis pred & in magnam oppression & depauperation omnium dicti Dom Regis nunc Ligeorum ad Mercata pred cum victualibus & provisionibus suis accedent & venient ad grave dampnum & nocumentum omnium Ligeorum & Subditorum dicti Domini Regis in augmentation preciorum omnium victual' & provision in Mercata pred vendit ac in dicti Domin Regis nunc & Corone sue Regie exheredationem manifestam ac contra fidem in ipsis ut corpore corporat & politic per Domin Regem ac Leges hujus Regni Angl' reposit prout pred Attorn dict' Dom Regis nunc Generalis pro eodem Dom Rege nunc superius replicando allegavit, absque hoc quod pred Major & Communitas ac Cives Civitatis London a tempore cujus contrarii memoria hominum non existit habuer seu habere consuever tolnet, ratas, sive denar summas per ipsos Majorem & Communitat ac Cives Civitat pred superius supposit fore per prefat Legem sive Ordination pred assess. & in certitudinem reduct' prout per placitum ipsorum Majoris & Communitat ac Civium Civitat London pred superius rejungendo supponitur. Et hoc idem Attorn General' pro eodem Domin Rege nunc parat est verificare unde ex quo idem Major & Communitas ac Cives Libertat, Privileg & Franches. pred fore de seipsis Corpus Corporat & Politicum ex causa pred forisfecer idem Attorn General' ut prius pro eodem Domin Rege nunc per Judicium, & quod pred Major & Communitas ac Cives Civitat London pred, de premissis convincantur ac de Libertat, Privileg & Franches. ill' abjudicentur & excludentur, &c.

Et quoad placitum prefat Majoris & Communitat ac Civium Civit London pred superius rejungendo placitat quoad resid pred placiti pfat Attorn General' in assign forisfactur ut prefertur superius replicando placitat idem Attorn dict' Dom Regis nunc General' protestando quod pred prorogatio dicti Parliamenti per prefat Dom Regem fuit pro diversis necessar & urgentibus causis bonum & utilitatem dicti Dom Regis & Regni sui concern, Et secundum veram & indubitat prerogativam & potestatem dicti Dom Regis nunc, Et per eandem prorogationem prosecutio publice Justicie Regni & preparationis, Angl' the making Provisions necessar pro preservation dict' Dom Regis & ejus Subditorum Protestantium non recipiend obstructionem Ang Interruption, prout per Petitionem pred & Vota & Suffragia prefat Majoris & Communitat ac Civium Civitat pred in dicto Commun Concilio assemblat sic ut prefertur ordinat fuit & malitiose allegatur pro placito tamen idem Attorn General' pro eodem Dom Rege nunc dic quod placitum prefat Majoris & Communit ac Civium Civitat London pred superius rejungendo in ea parte placitat materiam in eodem content minime sufficien in lege existunt ad ipsos Majorem & Communit ac Cives Civitat pred ad clamand Libertat, Privileg & Franches. pred fore de seipsis

corpus

corpus corporat & politicum in re facto & nomine per nomen Majoris & Communit ac Civium Civ' London prēd, ac per idem nomen placit & implacit resp & responderi sibi allocand seu adjudicand manuten, Quodq; ipse idem Attorn Gener ad placitum ill' modo & forma, prēd placitat pro eodem Dom Reg nunc necesse non habet, nec per Legem terre tenetur aliquo modo respondere. Et hoc idem Attorn dict' Dom Regis nunc General' pro eodem Dom Rege nunc parat est verificare. Unde pro defectu sufficien placiti iplorum Majoris & Communitat ac Civium Civitat prēd in hac parte idem Attorn dicti Dom Regis nunc General' pro eodem Dom Rege nunc ut prius per Judicium, & quod prēd Major & Communitas ac Cives Civitat London prēd de premissis convincantur & de Libertat, Privileg & Franches. ill' adjudicentur & excludantur, &c.

Joynder in Demurrer.

Et prēd Major & Communitas ac Cives Civit prēd quoad motacon in Lege prefat Attorn dic Dom Regis nunc Generalis quoad prēd placitum iplor Major & Communitat ac Civium Civitat London superius resungendo placit quoad prēd resid prēd placiti dic Attorn General in assign forisfactur ut prefertur superius replicando placitat & quo ipsi sufficien materiam in lege in eod placito suo ad iplos Majorem & Communitat ac Cives Civitat London ad clamand prēd libertat privileg & franches. fore de seipsis unum corpus corporat & politicum in re facto & nomine per nomen Major & Communitat ac Civium Civitat London ac per idem nomen placitare & implacitari respondere ac respondere per iplos superius clamat eis allocand & adjudicand manutenend superius allegaver quam ipsi parat sunt verificare quam quid materiam prēd Attorn dic Dom Regis nunc General pro eodem Dom Rege non dedicit nec ad eam aliqualit respond sed verificacon ill' admittere omnino recusat ut prius per Judicium Et quod libertat privileg & franches. ill' eis & Successorib suis deinceps allocentur & adjudicentur, Et quod ipsi quoad premiss. ill' ab hac Cur dimittantur, &c.

Rebutter.

Et quoad pd placit pd Attorn Dom Regis nunc General p eod Dom Rege quoad confection & publication legis p levatione denar de plon ad publica Percata infra Civit prēd tent cum victual & provisionibus ibidem vendend accedent ac exaction & levation hujusmodi denar supius fieri supponit supius resungend placitat iidem Major & Communitas ac Cives Civit prēd ut prius dicunt quod Major & Communitas ac Cives Civit London prēd a tempore cujus contrar memor hom non existit habuer & habere consuever rationabil Molnet ratas sive denar summas de omnibus person ad Percat prēd cum victual' & provision ibidem vendend tenend pro Stallis Stationibus & al accommodacon per eas pro vendition expositione hujusmodi victual' & provision in Percat il' habit Et de hoc pon se super Patriam.

Demurrer.

Et prēd Robertus Sawyer Mil' Attorn dic Dom Regis nunc General' qui pro eod Dom Rege in hac parte sequitur dic quod placitum prēd prefat Major & Communitat ac Civium Civit London prēd superius repellando placitat materiaq; in eod content minus sufficien in Lege existunt ad iplos Major & Communitat ac Cives Civit prēd ad clamand libertat privileg & franches. prēd fore de seipsis unum corpus corporat & politicum in re facto & nomine per nomen Major & Communitat ac Civium Civitat London prēd ac per idem nomen placitare & implacitari respondere & respondere sibi allocand seu adjudicand manutenend ad quod quidem placitum modo & forma prēd placitat idem Attorn dic Dom Regis nunc General' necesse non habet nec per legem terre tenetur aliquo modo respondere pro eo quod iidem Major & Communitas ac Cives Civit prēd non ostender quanta vel qualia Molnet ratas sive denar summas iidem Major & Communitas ac Cives Civit London prēd a tempore cujus contrar memor hominum existit habuer nec allegaver quod ipsi unquam habuer Molnet rat sive dener summas per iplos superius supponit fore per legem suam prēd fore reduct in certitudinem Et hoc idem Attorn dic Dom Regis nunc General' pro eodem Dom Rege parat est verificare unde pro defectu sufficien placiti prēd in hac parte idem Attorn dic Dom Regis nunc General' pro

eodem

eodem Dño Rege ut prius per Judicium Et quod pred Major & Communitas ac Cives Civitat London pred de premiſſ. pred in placit pred convincantur & de Libertat Privileg & Franchel. ult ſuprad'ct penitus excludantur & abjudicentur, &c.

Et pred Major & Communitas ac Cives Civitat London pred petunt licencia inde interloquend coram Dom Rege ulq in Octab Sancti Hillar' ubicunq, &c. Et eis concedit idem dies dat eſt pref Attorn dic Dom Regis nunc General, &c. Et pred Attorn dic Dom Regis nunc General qui pro eod Dom Rege in hac parte ſequitur quoad placitum pref Majoris & Communitat ac Civium Civitat London pred quoad libertat privileg & franchel. pred per ipſos ſuperius clamat videlic ipſos habere Vicecom Civit & Com Civit London & Vicecom Com Midd' & nominare & eligere ex ſeipſis duas perſon foze Vic Civit pred & Com ejuſdem Civit & Vic Com Midd' ac ill ſic nominat & elect' perſitere & conſtituere Vic Civit pred & Com ejuſdem Civit & Vic Com Midd' ac ut Vic Civit pred & Com ejuſdem Civit de execution & return omnid Brevid Billard & Preceptorum Dom Regis pro adminiſtratione Juſtic infra Civit pred & Com ejuſdem Civit exequend & facien que ad Officiu Vic faciend pertinent & ad faciend & exequend omnia & ſingula alia infra Civit pred & Com ejuſdem Civit que ad Officium Vic faciend pertinent ac ut Vic Com Midd' pro eodem Com deſervitur ac omnia Brevia Billas & precept Dom Regis infra Com Midd' pred pro adminiſtratione & execution Juſtic ibidem exequend & return inde faciend que ad Officium Vic faciend pertinent ſuperius placitat necnon quoad placitum pref Major & Communitat ac Civium Civitat London pred quoad libertat privileg & franchel. per ipſos ſuperius clamat videlic Major dic Civitat & huſulmodi Aldermañ ejuſdem Civitatis qui Officium Majorat Civit ult ſuſtinuer ac inde fuer dimiſſi tertes Aldermañ Senior Civit pred qui diutius in Offic Alderman Civit pred ſteter & omes & Officium Majorat Civit pred non ſuſtinuer foze Juſtic Dom Regis ad Patem infra Civit pred conſervand ac ad Seſſion Pacis & Placita Coron ſcilicet tal' placita Coron qual' Juſtic Dom Regis ad pacem conſervand aſſign legitime tenend [illegible]lem infra eand Civitat tenend ac ad omnia Felon Riot Rout & Conventicul' illicit infra Civit pred inquirend audiend & terminand ſuperius placitat idem Attorn dic Dom Regis nunc General' qui pro eodem Dom Rege in hac parte ſequitur petit ulterius licenc inde interloquend quam Dom Rege ulq Octab Sancti Hillar' Et ei conceditur, &c. Idem dies dat eſt pref Majori & Communitat ac Civibus Civitat London pred, &c. Et quoad materiam in Lege unde tam pred Attorn dic Dom Regis nunc General' quam pred Major & Communitat ac Cives Civitat pred poluer le in Judic Cur ſed quia Cur dic Dom Regis nunc hic de Judic ſuo de & ſuper premiſſis redend nondum adviſatur dies inde dat eſt tam pref Roberto Sawyer Mil' Attorn dic Dom Regis nunc General' qui pro eodem Dom Rege in hac parte ſequitur quam pred Major & Communitat ac Civibus Civitat London, &c. coram Dom Rege in pred Octab Sancti Hillar' ubicunq, &c. de Judic ſuo inde audiend eo quod Cur Dom Regis hic nondum &c.

Li. Lo.

Ad quam quidem Octab Sancti Hillar' coram Dom Rege apud Weſtm' ven tam pref Robertus Sawyer Mil' qui ſequitur, &c. quam pred Major & Communitas ac Cives Civitat London pred p Attorn ſuum pred Et pred Major & Communitas ac Cives Civitat London pred ex quo ipſi ſufficien materiam in lege in placito ſuo pred ſuperius repellando placitat ad ipſos Majorem & Communitat ac Cives Civitat London ad clamand libertat privileg & franchel. foze de ſeipſis und corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civitat London ac per idem nomen placitare & implacitari reſpondere ac reſponderi per ipſos ſuperius clamat eis allocand & adjudicand manutenend ſuperius allegaver quam ipſi parat ſunt verificare quam quidem materiam pred Attorn dic Dom Regis nunc General' pro eodem Dom Rege non dedic nec ad eam aliquid reſpond ſed verification ill' admittere omnino recuſat ut prius per Judic & quod libertat privileg

Joynder in Demurrer.

vileg & franchel. ill eis & Succeſſoribus ſuis imperpetuum deinceps allocentur & adjudicentur Et quod ipſi quoad premiſſ. ill ab hac Cur dimittantur, &c. Et pred Attorn dic Dom Regis nunc Generak qui pro eodem Dom Rege in hac parte ſequitur quod exit pred int pred Dom Regem & prefak Major & Communitak ac Cives Civitak London per Patriam triand ſuperius junct' Et quoad libertak privileg & franchel. pred p ipſos ſuperius clamak videlik ipſos habere Vic Civik & Com Civik London & Vic Com Midd' & nominare & eligere ex ſeipſis duas perſon forr Vic Civik pred & Com ejuſdem Civit ac Vic Com Midd' ac ill ſic nominak & elect' preficere & conſtituere Vic Civik pred & Com ejuſdem Civitak & Vic Com Midd' ac ut Vic Civik pred & Com ejuſdem Civik ad execution & retorn omnium Brevium Billarum & Preceptor Dom Regis pro Adminiſtratione Juſticie infra Civik pred & Com ejuſdem Civik exequend & faciend que ad Officium Vic faciend pertinent ac ad faciend & exequend omnia & ſingula ak infra Civik pred & Com ejuſdem Civik que ad Officiu Vic faciend pertinent ac ut Vic Com Midd' pro eodem Com deſervitur ac omnia Brevia Billas & Precept Dom Regis infra Com Midd' pred pro Adminiſtratione & Execution Juſticie ibidem exequend & retorn inde faciend que ad Officiu Vic faciend pertinent ſuperius placitak necnon quod libertak privileg & franchel. per ipſos ſuperius clamak videlik Majorem dic Civitak & hujuſmodi Alderman ejuſdem Civitak qui Officiu Majorak Civitak illius ſuſtinuer ac inde fuer dimiſſi ac tres Alderman Sen Civitak pred qui diutius in Officio Alderman Civik pred ſteter & onus & Officium Majorak Civik pred non ſuſtinuer forr Juſticiar Dom Regis ad pacem infra Civik pred conſervand ac ad Seſſion Pacis & Placita Coron ſcilicet tak placita corn qual Juſtic Dom Regis ad pacem conſervand aſſign legittime tenere poſſent infra eandem Civik tenend ac ad omnia Felon Riot Rout & Conventicul illicit infra Civik pred inquirend audiend & terminand ſuperius placitak dic quod ipſe pro eodem Dom Rege in ea parte ulterius proſequi non vult verſus prefak Majorem & Communitak ac Cives Civitak London pred.

Nolle proſequi al Part.

Ideo conſ. quod prefak Major & Communitas ac Cives Civitak London pred quoad exit int pred Dom Regem & prefak Majorem & Commu[illegible] ac Cives Civitak London pred per Patriam triand ſuperius junct' & quoad libertak privileg & franchel. pred per ipſos ſuperius clamak videlik ipſos habere Vicecom Civik & Com Civik London & Vic Com Midd' & nominare & eligere ex ſeipſis duas perſonas forr Vic Civik pred & Com ejuſdem Civik & Vic Com Midd' ac ill ſic nominak & elect' preficere & conſtituere Vic Civik pred & Com ejuſdem Civik & Vic Com Midd' ac ut Vic Com Civik pred & Com ejuſdem ad execution & retorn omnium Brevium Billarum & Preceptor Dom Regis pro Adminiſtratione Juſticie infra Civik pred & Com ejuſdem Civik exequend & faciend que ad Officiu Vic faciend pertinent ac ad faciend & exequend omnia & ſingula ak infra Civik pred & Com ejuſdem Civitak que ad Officiu Vic faciend pertinent ac ut Vic Com Midd' pro eodem Com deſervitur ac omnia Brevia Billas & Precepta Dom Regis infra Com Midd' pred pro Adminiſtratione & Execution Juſticie ibidem exequend & retorn inde faciend que ad Officium Vic faciend pertinent ſuperius placitak necnon quoad libertak privileg & franchel. per ipſos ſuperius clamak videlik Majorem dic Civik & hujuſmodi Alderman ejuſdem Civitak qui Officiu Majorak Civik ill ſuſtinuer ac inde fuer dimiſſi ac tres Alderman Sen Civik pred qui diutius in Offic Alderman Civitak pred ſteter & onus & Officium Majorak Civik pred non ſuſtinuer forr Juſtic ar Dom Regis ad pacem infra Civik predict' conſervand ac ad Seſſion Pacis & Placita Coron ſcilicet talia placita Coron qual' Juſtic Dom Regis ad pacem conſervand aſſign legittime tenere poſſint infra eandem Civik tenend ac ad omnia Felon Riot Rout & Conventicul' illicit infra Civik pred inquirend audiend & terminand ſuperius placitak eant inde ſine die ſalvo jure Dom Regis ſi al' &c. Et quoad dic ſeparal' materias in lege unde tam pred Attorn dic Dom Regis nunc Generak quam pred Major & Communitas ac Cives Civitak pred poluer ſe in Judic Cur ſed quia Cur dic Dom Regis nunc hic de Judic ſuo de & ſuper premiſſ. reddend nondum advisatur dies inde dak

eſt

est tam prefat Roberto Sawyer Pil' Attorn dic Dñi Regis nunc Genetal' qui pro eod Dño Rege in hac parte sequitur quam pred Major & Communitat ac Civibus Civitat London &c. coram Dño Rege a die Pasche in quindecim dies ubicunq, &c. de Judicio suo inde audiend eo quod Cur dic Dñi Regis hic nondum, &c. Ad quē quid quinden Pasche coram Dño Rege apud Westm' ven tam prefat Robertus Sawyer Pil' Attorn dic Dñi Regis nunc General' qui pro eodem Dño Rege in hac pte sequitur qua prefat Major & Communitas ac Civit London pred per Attorn suum pred seu quia Cur. dic Dñi Regis nunc hic de Judicio suo de & super premiss. reddend nondum advisatur dies inde ulterior dat est tam prefat Roberto Sawyer Pil' qui sequitur, &c. quam prefat Majori & Communitat ac Civib Civitat London pred coram Dño Rege in Crastin Sancte Trinitat ubicunq, &c. de Judicio suo superinde audiend, &c. eo quod Cur Dñi Regis hic nondum, &c. Ad quod quidem Crastin Sancte Trinitat coram Dño Rege apud Westm' ven tam prefat Robertus Sawyer Pil' Attorn Dñi Regis nunc General' qui pro eodem Dño Rege in hac parte sequitur quam pred Major & Communitas ac Cives Civit London pred per Attorn suum pred Et idem Attorn dic Dñi Regis pro eodem Dño Rege pet Judic versus pred Major & Communitat ac Cives Civit London pred in premiss. reddend quod dic libertat privileg & franches. fore de seipsis unū corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civitat London ac p idem nomen placitare & implacitari respondere & responderi per ipsos superius clamat capiantur in manus Dñi Regis nunc Sup quo p eo quod videtur Cur hic quod prefat Major & Communitas ac Cives Civit pred forisfecer Dño Regi nunc libertat privileg & franches. pred ob causas in replicatione prefat Attorn General' superius specificat quodq placita prefat Majoris & Communitat ac Civium Civitat London pred superius rejungendo & repetendo in ea parte placitat materiaq in eisdem content minus sufficien & invalida in lege existunt ad precludend dic Dom Regem a forisfactur pred aut ad ipsos Majorem & Communitat ac Cives Civit pred ad clamand libertat privileg & franches. pred sibi allocand & adjudicand manutenend maturaque deliberatione superinde prius habit.

Cons. est quod libertat privileg & franches. pred fore de seipsis unū corpus corporat & politicum in re facto & nomine per nomen Majoris & Communitat ac Civium Civit London ac p idem nomen placitare & implacitari respondere ac responderi p eosdem Majorem & Communitat ac Cives Civit London pred superius clamat capiantur & seisiantur manus Dñi Regis & quod prefat Major & Communitas ac Cives Civit London pred capiantur ad satisfaciend dic Dño Regi de fine suo pro usurpatione libertat privileg & franches. pred. Judicium.

De

Mich. 33. *Car.* II. *in B. R. rot.* 137.

Sir *Robert Sawyer* Knight, His Majeſty's Attorny General

AGAINST

The Lord Mayor, and Commonalty, and Citizens of *London.*

The Information in Nature of a Quo Warranto *ſets forth,*

THAT the Mayor and Commonalty and Citizens of the City of *London*, by the ſpace of a Month then laſt paſt and more, uſed and yet do claim to have and uſe, without any Lawful Warrant or Regal Grant within the City of *London* aforeſaid, and the Liberties and Priviledges of the ſame City, The Liberties and Priviledges following, *(viz.)*

I. To be of themſelves a Body Corporate and Politique by the Name of Mayor and Commonalty and Citizens of the City of *London.*
II. To have Sheriffs *Civitat. & Com' London. & Com. Midd'*, and to name, elect, make and conſtitute them.
III. That the Mayor and Aldermen of the ſaid City ſhould be Juſtices of the Peace, and hold Seſſions of the Peace.

All which Liberties, Priviledges and Franchiſes the ſaid Mayor and Commonalty and Citizens of *London* upon the King did by the ſpace aforeſaid Uſurp, and Yet do Uſurp.

THE Mayor and Commonalty and Citizens they appear by their Attorney, and Plead, *Plea.*

I. As to their being a Body Politique and Corporate, they preſcribe and ſay,

1. That the City of *London* is, and time out of mind hath been an Antient City, and that the Citizens of that City are, and by all that time have been, a Body Corporate and Politique, by Name of Mayor and Commonalty and Citizens of the City of *London*.

That in *Magna Carta de Libertatib' Angliæ*, in the Parliament holden 9 *Hen.* 3. it was enacted *quod Civitas London' habeat Omnes Libertates ſuas antiquas & Conſuetudines ſuas.*

That in the Parliament 1 *E.* 3. That King by his Charter *De Aſſenſu Prelatorum Comitum Baronum & totius Communitatis Regni ſui*, and by Authority of the ſame Parliament, having recited that the ſame Citizens at the time of the making *Magna Carta*, and alſo in the time of *Edward the Confeſſor*, *William the Conqueror*, and other his Progenitors, had divers Liberties and Cuſtoms, Wills and Grants by Authority aforeſaid, That the ſame Citizens ſhall have their Liberties according to *Magna Carta*--- And that for any Perſonal Treſpaſs *Alicujus Miniſtri ejuſdem Civitatis; Libertas Civitatis illius in manus ejuſdem Domini Regis* Ed. 3. *vel heredum ſuorum non caperetur, ſed hujuſmodi Miniſter prout, qualitatem transgreſſionis puniretur.*

They Plead alſo,

That in the Parliament holden 7 *R.* 2. *Omnes Conſuetudines Libertates Franchefia & Privilegia Civitatis predict' tunc Civibus Civitatis illius, & eorum Succeſſoribus, Licet uſi non fuerint vel abuſi fuerint Authoritate ejuſdem Parliamenti, ratificat' fuerunt.*

Then they Plead the Confirmations of ſeveral later Kings by their Charters, as of

King *Henry* VI. by his Charter, Dated 26 *Octob.* 23 *H.* 6.
King *Edward* IV. by his Charter, Dated 9 *Nov.* 2 *E.* 4.
King *Henry* VII. by his Charter, Dated 23 *July*, 20 *H.* 7.
King *James* I. by his Charter, Dated 25 *Sept.* 6 *Jac.* 1.
King *Charles* I. by his Charter, Dated 18 *Octob.* 14 *C.* 1.
King *Charles* II. by his Charter, Dated 24 *Jan.* 15 *C.* 2.

Ac eo Warranto they claim to be, and are a Body Politique, &c. and traverſe their Uſurping upon the King.

II. As to the having, electing, making and conſtituting Sheriffs of *London* and *Middleſex*, they Plead,

That

That they are, and time out of mind were a Body Politique and Corporate, as well by the Name of Mayor and Commonalty and Citizens, *quam per nomen Civium London.* And that King *John* by his Letters Patents under the Great Seal of *England* in Court produced, dated 5 *Julii*, *Anno regni ſui primo*, granted to the Citizens of *London*, that they ſhould have the electing, making and conſtituting Sheriffs of *London* and *Middleſex imperpetuum.*

Then they plead this Liberty and Franchiſe confirmed to them by all the aforementioned Statutes and Charters *ac eo Warranto* they claim to make and conſtitute Sheriffs.

III. As to the Mayors and Aldermens being Juſtices of the Peace, and holding Seſſions, they plead,

That the City is, and time out of mind was, an Antient City and County, and the Citizens a Body Politique.

That King *Charles* the Firſt by his Letters Patents, Dated 18 *Octob.* 14. *Car.* I. Granted to the Mayor and Commonalty and Citizens of the City of *London*, That the Mayor and Aldermen of *London*, ſuch of them as had been Mayors, ſhould be Juſtices of the Peace, and ſhould hold Seſſions, *& eo Warranto*, they claim to be Juſtices, and hold Seſſions.

TO this Plea the Attorney General replies. And as to the Mayor and Commonalty and Citizens of *London*, being a Body Politique and Corporate, *Reſponſ.*

Firſt takes Iſſue that they never were a Body Corporate, and for this puts himſelf upon the Country. And then goes over and pleads,

That the Mayor, Commonalty and Citizens aſſuming upon themſelves to be a Body Politique and Corporate, and by reaſon thereof to have Power and Authority to convocate and aſſemble, and make Laws and Ordinances not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preſerving the Kings Peace--Under colour and pretext thereof, but reſpecting only their private gain and profit, and againſt the Truſt in a Body Corporate, by the Laws of this Kingdom repoſed, aſſumed an unlawful and unjuſt Authority, to levy Mony upon the

Kings Subjects, to their own proper uſe, by colour of Laws and Ordinances by them *de facto*, ordained and eſtabliſhed. And in proſecution and execution of ſuch illegal and unjuſt Power and Authority by them Uſurp'd 17*th* of *Septemb.* 26 *Car.* II. in their Common Council Aſſembled, made, conſtituted and publiſhed a certain Law by them *de facto*, enacted for the levying of ſeveral Sums of Mony of all the Kings Subjects coming to the Publique Markets within the City to ſell their Proviſions, (*viz.*) Of every Perſon for every Horſe-load of Proviſions into any publick Market within the ſaid City brought to ſell, 2 *d. per* day. For every Doſſer of Proviſions, 6 *d. per* day. For every Cart-load not drawn with more than Three Horſes, 4 *d. per* day. If drawn with more than three *Horſes*, 6 *d. per* day. And that theſe Sums of Mony ſhould be paid to the uſe of the Mayor, Commonalty and Citizens: And if any refuſed to pay, then to be removed from his Place in the Market. And that by colour of this Law the Mayor, Commonalty and Citizens for their own private Gain, had Illegally by the ſpace of Seven Years next after the making this Ordinance, received divers great Sums of Mony, in all amounting to 5000 *l. per Annum*, in oppreſſion of the Kings Subjects.

And further, That whereas a Seſſion of Parliament was holden by Prorogation, and continued to the 10*th* of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next:

The Mayor, Commonalty and Citizens, 13 *Jan.* 32 *Car.* II. in their Common Council aſſembled unlawfully, maliciouſly, adviſedly and ſeditiouſly, and without any lawful Authority, aſſumed upon themſelves *Ad cenſendum & judicandum dictum Dominum Regem & Prorogationem Parliamenti per Dominum Regem ſic fact'*. And then and there in Common Council Aſſembled, did give their Votes and Order, that a certain Petition under the name of the Mayor, Aldermen and Commons of the City of *London* in Common Council aſſembled, to the King ſhould be exhibited, in which ſaid Petition was contained,

That by the Prorogation the proſecution of the publique Juſtice of the Kingdom, and the making neceſſary proviſion for

for the preſervation of the King, and of his Proteſtant Subjects had received interruption. And that the Mayor, and Commonalty and Citizens in the ſame Common Council aſſembled did unlawfully, maliciouſly, adviſedly and ſeditiouſly, and with intention that the ſaid Petition ſhould be diſpers'd amongſt the Kings Subjects, to induce an opinion in them, that the ſaid King by proroguing the Parliament had obſtructed the publique Juſtice, and to incite the Kings Subjects to hatred of the Kings Perſon and Government, and to diſturb the Peace of the Kingdom, did Order that the ſaid Petition ſhould be printed, and the ſame was printed accordingly to the intent and purpoſe aforeſaid.

By which the Mayor, Commonalty and Citizens aforeſaid the Priviledge, Liberty and Franchiſe of being a Body Politique and Corporate did forfeit, and afterwards by the time in the Information, that Liberty and Franchiſe of being a Body Politique, did uſurp upon the King. *Et hoc*, &c.

And as to the other two Pleas, (*viz.*) The making and having Sheriffs and Juſtices of the Peace, The Attorney General Imparles to *Mich.* Term.

THE Mayor, Commonalty and Citizens, as to the *Plea* of the Attorney General, pleaded in Aſſigning a Forfeiture of their being a Body Politique and Corporate, *Rejoynder.*

Proteſtando, That thoſe *Pleas* by the Attorney pleaded, and the matter in the ſame contained, are inſufficient in the Law to forejudge or exclude the Mayor and Commonalty and Citizens from being a Corporation.

Proteſtando etiam, That no Act or Deed, or By-Law made by the Mayor, Aldermen and Common Council is the Act or Deed of the Body Corporate.

Proteſtando etiam, That they the Mayor and Commonalty and Citizens of *London* never took upon them any unlawful or unjuſt Authority to Tax the Kings Subjects for their own private Gain, or did ever levy or exact from the Kings Subjects coming to Markets ſuch yearly Sums as in the Replication are alledged--- For *Plea* ſay,

That

That *London* is the Metropolis of *England*, and very populous, *& Celeberrimum Emporium totius Europæ.*

That there are, and time out of mind have been, divers publique Markets for Proviſion and Merchandiſe within the ſaid City to be ſold.

That the Mayor and Commonalty and Citizens have been, time out of mind, and yet are, ſeiz'd of theſe Markets in Fee, and by all the ſaid time at their own Coſts and Expences have provided and have accuſtomed, and ought to provide at their own coſts Places for the holding the ſaid Markets and Stalls, and Standing, and other Accommodations for perſons bringing Proviſions and Merchandiſes to the ſaid Markets, and Superviſors and other Officers for the better preſerving and ordering the ſaid Markets, and of the great concourſe of perſons coming to the ſame; and for the ſuſtaining and ſupporting of the ſaid coſts and expenſes, by all the time aforeſaid have had, and ought to have, reaſonable Tolls, Rates or Sums of Mony of perſons coming to the ſaid Markets for their Stalls, Standings, and other Accommodations by them for the better expoſing their Commodities had and enjoyed.

They further ſay, That the Citizens and Freemen of *London* are very numerous, (*viz.*) 50000 and more.

That within the ſaid City there hath been, time out of mind, a Common Council aſſembled as often as neceſſary, conſiſting of the Mayor, Aldermen, and of certain of the Citizens, not exceeding 250 perſons thereto annually elected, called the Commons of the ſaid City.

That there is a Cuſtom within the ſaid City for the Mayor, Aldermen and Common Council to make By-laws and Ordinances for the Regulation and Government of the publique Markets within the City.

That theſe Liberties and Cuſtoms of the City were confirmed by *Magna Carta*, and the other Statutes in the Plea abovementioned.

That by reaſon of the burning of the City in *Septemb.* 1666. and the Alterations in the Market-Houſes and Places thereby occaſion'd, for the eſtabliſhing and reſetling the Markets within the City, 17 *Septemb.* 26 *Car.* II the then Mayor

Mayor, Aldermen and Commons in Common Council Aſſembled, according to the ſaid Cuſtom, for the better Regulation of the ſaid Market did make and publiſh an Ordinance, Entituled *An Act for the Settlement and well-ordering the Publique Markets within the City of* London; by which ſaid Ordinance reciting that for the accommodation of the Market People with Stalls, Shelters, and other Neceſſaries for their Standing in the Markets, and for the amendment, paving and cleanſing the Market-places, and for the ſupport and defraying the incident Charges thereof, there have been always certain reaſonable Rates and Duties paid for the ſame. And to the intent that the ſaid Rates may be aſcertain'd and made publiqute to all Market-people, and the Collectors reſtrained from exacting--- It was Enacted and Ordained by the ſaid Common-Council, that the Rates and Sums in the Replication ſhould be paid to the uſe of the Mayor and Commonalty and Citizens; or upon refuſal, to be removed out of the Market. And they aver, that theſe are all the Rates or Duties paid, and were reaſonable Sums to be paid; and theſe they have demanded and received for the uſe and purpoſe aforeſaid, as was lawful for them to do.

As to the other matter alledged by the Attorney General in Aſſigning the Forfeiture, they ſay,

That within this Kingdom, (*viz.*) at the Pariſh of St. *Michael Baſſiſhaw*, *London*, there was an execrable Plot and Conſpiracy proſecuted by Papiſts to deſtroy the King, and to ſubvert the Ancient Government, and ſuppreſs the true Religion in this Kingdom Eſtabliſhed.

That Sir *Edmundbury Godfrey* took Examinations of Witneſſes, and Informations of the ſame; and alſo of the burning of *London* by the *Papiſts*.

That divers of theſe Conſpirators had lain in wait for him and murthered him, to the intent to ſuppreſs his Examinations, and to deter other Magiſtrates from acting in the Diſcovery.

That *Green* and others were try'd, and hang'd for this Murther.

That

That *Coleman* and others were alſo try'd, and executed for the ſame Conſpiracy.

That *William* Lord *Powis*, Lord *Arundel* of *Warder*, Lord *Petre*, Lord *Bellaſis* were Impeached by the Commons in Parliament of *High Treaſon* for the ſame Conſpiracies, and ſent to the *Tower*.

That the King in his Speech to that Parliament had recommended to them the further purſuit and examination of that Conſpiracy, declaring he thought not himſelf nor them ſafe, till that matter were gone through with; and therefore that it was neceſſary that the ſaid Lords in the *Tower* ſhould be brought to their Trials, that Juſtice might be done; and the Parliament having made an Addreſs to the King, wherein both Lords and Commons declared their being deeply ſenſible of the ſad condition of the Realm, occaſioned chiefly by the Conſpiracies of a Popiſh Party, who had plotted and intended the Deſtruction of the King, and Subverſion of the Government and Religion of the Kingdom; and thereupon a Solemn Faſt kept purſuant to the Kings Proclamation, grounded upon the ſaid Addreſs, and divers Bills prepared to be paſs'd into Laws for preſervation of his Proteſtant Subjects.

Theſe Impeachments and Bills being thus depending, and the Lords in the *Tower*, not Tryed, the Parliament was upon the 10*th* of *January* prorogued, as the Attorney General above in his Replication hath alledged, by reaſon whereof the Citizens and Inhabitants of the ſaid City being faithful Subjects to the King, were much diſquieted with the ſenſe and apprehenſions of the Danger threatning the Perſon of the King, his Government and Realm, by reaſon of the Conſpiracies aforeſaid, as is by both King and Parliament affirmed and declared; and conceiving no better means to prevent, than by the Sitting of the Parliament; and having received a Petition from divers faithful Subjects, Citizens of *London*, to the ſame effect: And it being lawful to Petition, the Mayor, Sir *Patience Ward*, and the Aldermen and Commons in Common Council aſſembled, for the preſervation of the King and his Government did cauſe to be written the Petition in the Replication mentioned, which is ſet forth in

in *hæc verba*; and did Order, that after the ſame was preſented to the King, it ſhould be Printed for the ſatisfaction of the troubled Minds of the ſaid Citizens; and traverſe the writing or making any other Petition, or making this to any other end or intent than they have pleaded.

THE Attorney General as to the Plea of the Mayor, and Commonalty and Citizens pleaded to the making and publiſhing the Ordinance about the Markets, Surrejoynder.

Proteſtando, That the Mayor and Commonalty and Citizens were not ſeiz'd of the Markets, nor at their charges provided Stalls and Neceſſaries, or Market-places.

Proteſtando etiam, That the ſaid Rates and Sums were not reaſonable.

For Plea ſaith, That by a Statut made 22 *Car.* II. it was enacted that Places for Markets ſhould be ſet out, and 2 *d. per* Chaldron upon Coals for the charge of that, and many other things was given; and that they received a great Sum out of that Duty for the purpoſe aforeſaid; and yet for their own private Lucre took the Mony by the Ordinance.

And traverſeth, that the Mayor and Commonalty and Citizens time out of mind *habuerunt & habere conſueverunt Tolneta Ratas ſive denariorum ſummas per ipſos Majorem Communitatem & Cives ſuperius ſuppoſit. per prefatam Legem, ſive Ordinationem predict' Aſſeſſ. & in certitudinem reduct' prout per placitum ſuum ſuperius rejungendo placitat' ſupponitur.*

And to the Plea of the Mayor and Commonalty and Citizens pleaded to the Reſidue of the Attorney's matter aſſigned for a Forfeiture, as aforeſaid,

The Attorney *Proteſtando*, That the aforeſaid Prorogation of the Parliament was for urgent Cauſes concerning the good of the Kingdom, and thereby the proſecution of publique Juſtice not interrupted.

And Demurrs to the ſaid Plea of the Mayor and Commonalty and Citizens by them pleaded as to the Petition.

Rebutter. THE Mayor and Commonalty and Citizens, as to the making and publishing the Ordinance for the payment of Monies by those that come to the said Markets, say as before,

That the Mayor and Commonalty and Citizens have, time out of mind, had, and accustomed to have, reasonable Tolls, Rates, or Sums of Mony of all Persons coming to these Markets with Victuals and Provisions there to be sold, for Stalls, Standings, and other Accomodations by them had for exposing their Victuals and Provisions to sale. And of this they put themselves upon the Country, &c. To this Mr. Attorney demurrs.

And as to the Plea by the Mayor and Commonalty and Citizens pleaded to the Residue of the matter by the Attorney General, assigned for Forfeiture, they joyn in Demurrer.

Memorandum, That when the Demurrer in this Case was joyn'd, (*viz.*) *Mich.* Term. 34 *Car.* II. Mr. Sergeant *Pemberton* was Chief Justice of the *King-Bench.* But before *Hillary Term*, that it came to be argued, he was removed, and made Chief Justice of the *Common-Bench*; and Sir *Edmoud Saunders*, who had been Counsel for the King, in drawing and advising the Pleadings, was made Chief Justice of the *Kings Bench.*

De

De Termino Sancti Hillarii Annis RRs. Car. II. 34. & 35. Annoq; Dom. 1682.

In Banco Regis die Mercurii 7. Februarii.

Dominus Rex verſus Majorem Communitat' & Cives Civitat' London.

THIS Great Caſe was twice only argued at the Bar: Firſt, by Mr. Finch the Kings Sollicitor, for the King; and Sir George Treby Recorder of London, for the City. And next, by Sir Robert Sawyer the Kings Attorney General, for the King; and Henry Pollexfen for the City.

Mr. Sollicitor. The Queſtions in this Caſe, as I think, will be, Mr. Sollicitor.

I. Whether any Corporation can be Forfeited?

II. Whether the City of *London* differ from other Corporations as to point of Forfeiture?

III. Whether any Act of the Mayor, Aldermen and Common Council in Common Council Aſſembled, be ſo much the Act of the Corporation as can make a Forfeiture?

IV. Whether the Acts by them done in making the By-Law, and receiving Mony by it; or in making the Petition, and cauſing it to be Printed and Publiſhed be ſuch Acts, as if done by the Corporation, will make a Forfeiture of the Corporation?

The Firſt of theſe Queſtions truly I ſhould not make any Queſtion at all, but that this Caſe has been a Caſe of ſo great expectation, every man hath diſcourſed about it, and the prejudice that ſome have entertained concerning it, have drawn them to aſſert the Negative Propoſition. Therefore, my Lord, becauſe this ſtrikes to the whole, though I think it hath no Foundation in Law, I will beg leave to remove this Objection out of the Caſe.

I. Firſt of all, No Corporation hath any other Creation than any other Franchiſes have, and ſubſiſt upon the ſame Terms that other Franchiſes do.

II. There is a Truſt or a Condition in Law, that is annexed to, and grows upon all Franchiſes, that they be not abuſed, and the Breach of them is a Forfeiture of the very being of the Franchiſe.

III. And as there is no Foundation of that Opinion in Law, ſo the Miſchiefs would be great, if the Law were otherwiſe. For,

First, That no Corporation hath any other Creation than other Franchises have; 'tis undoubtedly true that the King is the Original and Commencement of all Franchises; they have their beginning from him, the Books are clear and full in it: I need not quote them, though there are many, Kelway 138. 17 Ed. 2. 530. in the Reports of those times set forth by Mr. Serjeant Maynard. Now, my Lord, there can be no Corporation, but by the Kings Letters Patents; for even the Prescription doth suppose there was the Kings Patent to create it at first. And therefore the proper Inquiry will be about the Second thing.

II. How far the Breach of Trust that is annexed to a Franchise, is a Forfeiture of that Franchise.

First of all, There is no Rule in Law more certain, than that the Misuser of a Franchise is a Forfeiture of that Franchise. This the Statute of 18 Ed. 2. does very well prove, which was an Act of Grace to restore Franchises to those that had lost and forfeited them. There it was restrained Ita quod libertat' non sint abusæ. And my Lord Coke 2 Inst. in his Observations upon the Statute of Westm' 1. That Chapter of it that concerns Towns that exacted more Murage than was granted, fol. 223. says, They shall lose that Grant for ever; says the Mirror. of Just. which my Lord Coke there quotes, that is no more than the Common Law; for the Law wills that every Man should lose his Franchise, that does misuse it: So the Abbot of St. Albans Case, 8 Hen. 4. 18. The King seized the Franchise into his hand, because the Abbot, who had the Goal, would not give Pledges to make Deliverance, and for detaining his Prisoners a long time without making a lawful Deliverance. And so 20 Ed. 4. 6. The Abbot of Crowland's Case for detaining Prisoners acquitted; after Fees paid the King seized the Goal for ever. These two are cited by my Lord Coke 2 Inst. 43. And in Sir George Reynel's Case, 9 Report, Fitzherberts Abridgment, Titl' coron' placit' 233. A Layman was taken in a Robbery, the Ordinary challenges him as a Clerk, whereas he was a Layman: It was ruled, that for his false challenge the Ordinary should lose his Temporalities to the King, and lose his Franchise to challenge Clerks for him and his Successors for ever. Thus far is plain, That Franchises, if misused, are forfeited; and that though enjoyed by Persons in a corporate capacity, as appears by the Cases put. And then as a Corporation may forfeit any Franchise they are seized of in right of the Corporation, so may a Corporation forfeit the Franchise of the Corporation it self, upon the same ground and reason in Law; unless any one will say, The Franchise of being a Corporation cannot be misused; and that would be a very strange matter to assert.

Every Corporation is entrusted with a Franchise to make Laws for Governing the Subject within its Jurisdiction. If that Power be exercised to the Subjects prejudice, as it may be, it were an hard matter if there were no Law to redress that Grievance. Suppose a Corporation under their common Seal should authorize a Rebellion, would any Man say that were no forfeiture? 'Tis said indeed by

Pigott,

Pigott, 21 Ed. 4. f. 13. Arguendo, upon a Caſe (where the Queſtion is Whether a Corporation ſhould avoid a Bond entred into by the Mayor by Dureſs) That a Corporation can neither commit Treaſon or Felony; but upon the ſame reaſon that he urges, That a Corporation cannot act at all, that is, auſtractedly from all the Members of it; for ſo this Notion is, that a Corporation is a Body in conſideration of Law only, and not reality; and therefore the particular Act even of the Head of that Body ſhall affect him perſonally only. But this is only a Notion of his arguing; but it is the beſt opinion of that Book, that Dureſs to the Members did ſo affect the Corporation, that it ſhould avoid the Bond.

Now, my Lord, a Corporation may be ſurrendred; and ſurely that that may be ſurrendred, may be forfeited; and I ſhall offer you ſome Authorities in this caſe, 12 E. 3. rot. clauſ. memb. 36. A Writ is directed to the Conſtable of Dover, reciting, That the Cinque-Ports had ſeized divers Goods of ſeveral Merchant Strangers Portugueſes, and others, and the Writ commands that Right ſhould be done, or elſe the Franchiſe ſhould be ſeized into the Kings hands, 6 Ed. 2. rot. clauſ. N°. 5. The Liberties of the City of Briſtol were ſeized, and the cuſtody of it granted to for divers contempts and injuries done per Majorem Ballivos & Communitat' to the King, and ſo the cloſe Rolls of R. 2. m. 6.

There is another Caſe that comes further, Paſch. 9 Ed. 1. Majus rot. 25. I find it likewiſe among my Lord Chief Juſtice Hales Collections that he has given to Lincolns-Inn Library; I took it out of that Book: 'Tis in the Collection of the Adjudicata in the time of Ed. 1. fol. 28. a. Thus it was: There was the Abbot of St. Auſtin in Canterbury had made an Agreement with the men of Sandwick about paying ten Hogsheads of Wine yearly to the Abbot; and there was due to the Abbot ſome thirty Marks, and he had Judgment, and Execution went out; and thus 'tis in the Book, Vic. de --- Mandatur quod Levari fac' 30 Marcas de bonis ipſius ad opus Abbatis pro pretio 10 Doleorum Vini annuatim ſolvend' And they made reſcue when the Sheriff came to execute the Writ, and they were ſued for that, and the Judgment of the King and his Council, which was by Parliament, for it was adjourned into Parliament, was Quod Libertas de Sandwick forisfact' ſit. And there is this Obſervation, tho it be written with the ſame Hand, which is not his, but the Clerks that tranſcribed it, Judicium illud extendit contra Barones 5 Portuum & eorum libertates ut mihi videtur. Theſe are the Words of that Book: And this will go a great way with the City of London as to their confirmation of Magna Charta; for the Cinque Ports are confirmed by Act of Parliament as well as they.

But, my Lord, there are many Caſes of like nature, and that even in the Caſe of the City of London too, as I ſhall ſhew you by and by. Now tho theſe are not Judgments in Quo Warranto's to out a Corporation of a Franchiſe of being a Corporation, yet it ſhews that theſe things were forfeitures of all the Franchiſes of a Corporation; for a Seizure is never but where there is matter of for-

forfeiture found upon Record, as in Sir George Reynel's Case; or to ground a forfeiture, upon which to bring a Quo Warranto, as in our Case. But in the Case of 9 Ed. 1. there it does appear Judgment was given by the Parliament, that the Liberty should be forfeited, not that it should be seized into the Kings hands only.

Now, my Lord, where all the Franchises of a Corporation are forfeited, what is the Corporation? Truly, 'tis nothing, 'tis but a Name; a Corporation without a Power to act, is nothing at all: Indeed I do not find any Judgment in a Quo Warranto of a Corporation being forfeited, yet, my Lord, it doth not follow from thence that this cannot be by Law; for many Quo Warranto's have been brought against London, and other places too, to out Corporations of their Franchises, but it hath always ended in submission to the King, and so they have bin at quiet. All the Quo Warranto's in Mr. Attorney Palmer's time, after the Kings Restauration, against the several Corporations, they all submitted; and yet that was to question the very being of their Corporations.

Now, my Lord, pray consider a little upon the Rule of Law: It should seem very strange if a Corporation should neglect to come into Eyre, or into the Kings Bench the same Term that a Quo Warranto is brought against them, they must be outed of their Franchise for ever, as 'tis said, 15 Ed. 4.6,&7. And yet, when all the contempts and oppositions imaginable are found upon Record that this should not be a forfeiture, that seems absurd that a Neglect in Eyre should do it, but all the Oppressions and Offences in the World, when found upon Record, should not do it.

But, my Lord, the mischiefs that would follow from hence are very great: How many Oppressions and Offences would be daily committed, if every Corporation were a Franchise and Jurisdiction independent upon the Crown? and the punishment truly of some particular Men for those Offences, would not be adequate, where the power of offending and misgoverning should still remain; sure that were no adequate redress of such an inconvenience. And to this purpose, my Lord, I shall humbly offer a Case, and 'tis that great Case betwen the Earls of Glouceſter and Hereford, Hill' 20. Ed. 1. in B. R. rot. Wallie 14. 'Tis likewise in Riley's Placita Parliamenti 83, 86. The Case is this in short, They both claimed the Liberty of Returna Brevium, and they had incurred great contempts in refusing to obey the Kings Writs, and Judgment was given against them, That the Liberty should be seized for this reason, which I think will go a great way in this Case, and for which I offer it, Quia puniendus est Dominus Libertatis in eo quo deliquit. I think, my Lord, as I said, that will go a great way in this Case, to shew the Reason of the Law.

My Lord, If the granting of too many and too large Franchises were a mischief, as certainly it was by Law, and as appears by the Commons Petitions 21 Ed. 3. rot. Parl. No. 17. where they pray, That new and large Franchises may not be granted, because it tended to the overthrowing the Common Law, and great Oppression of the People. And the Kings Answer was, That care should be taken

taken for the time to come. I ſay then, if this were ſuch a miſchief, that there ought not to be granted new and large Franchiſes, much more would it be a miſchief if theſe Franchiſes ſhould not be under the controul of the Law when they exerciſe ſuch Oppreſſion. And ſo my Lord I ſhall leave that point; for I think it will be pretty clear, that a Corporation may forfeit their being of a Corporation.

2. I ſhall next than conſider, whether the City of London be in any other plight than any other Corporations. I think truly there is no difference at all. Now this Queſtion doth depend upon what they have ſet forth by their Plea. And that is the confirmation of Magna Charta cap. 9. Civitas London habeat omnes libertates ſuas antiquas & conſuetudines ſuas. And then their Act of 1 E. 3. upon which my Lord Coke in his 4 Inſt. 253. ſays, that the Franchiſe of this City ſhall not for any Cauſe be ſeized into the Kings hands. And then theirs of 7 R. 2. which ſays, that the City ſhall enjoy its whole Liberties, Licet uſi vel abuſi. This is their Foundation upon which they would diſtinguiſh this City from all other Corporations. Now as to theſe things, I give theſe Anſwers.

First for Magna Charta, that plainly is no more a confirmation to them than 'tis to other Cities and Corporations. For not only the City of London is named to have its ancient liberties and cuſtoms preſerved, but 'tis likewiſe Omnes aliæ Civitat', &c. And all Cities, Burroughs and Towns, and the Barons of Cinque-Ports, and all other Ports, ſhould have all their Liberties and Frée Cuſtoms. So my Lord Coke agrées it in his Comment. And in what he cites out of the Mirror of Juſtice, and other ancient Authors of our Law, they ſhould enjoy their Franchiſes which they had right to by lawful title of the gift and confirmation of the King, and which they had not forfeited by any abuſe. So that the Act which confirmed them did not purge former forfeitures, much leſs did it license other abuſes.

Then for their Acts of 1 E. 3. and 7 R. 2. I ſhall humbly offer this, That as they are in Truth no Acts of Parliament at all, ſo they will not concern this Queſtion, whatſoever my Lord Coke ſays concerning them. But I ſhall give ſome inſtances before theſe Acts, to ſhew that they never had ſuch an unqueſtionable Power as they now dream of, and then ſome inſtances in after times, that there either were no ſuch Acts, or no ſuch ſenſe at leaſt is to be put upon them as they have ſtrained to make.

First it appears 15 E. 1. that the Franchiſe of the City of London was ſeized into the Kings hand, and Johannes de Britton was made Cuſtos Civitatis London, who was no Freeman; and this implies that the Franchiſe was ſeized into the Kings hands, for they had a power to chooſe de ſeipſis by Charter from King John a Citizen to be a Mayor or chief Governour, but here was another Governour appointed them.

Then Rot' Pat' 26 E. 1. Rex pro bono ſervicio Civit' London' reddit eis Civit' ſuam London habend' dict' Civibus ad volum' Regis. Teſte Rege. So that both the City and all its Franchiſes were ſeized at that time; for he reſtored the very City of London to the Citi-

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zens habend' during his Will and Pleasure. Thus my Lord it stood in the time of E. 1. Then in the time of E. 2. seized again; 14 E. 2. memb. 21. of the Pat' Rolls in 21 Rex dimisit Civibus London' Officium Major' Civitat' London', 15 E. 2. Rex dedit licentiam eligendi Major' London'. And in the second part of Pat' Rolls 15 E. 2. m. 5. The King recites, That whereas in the Fourteenth year of his Reign he had replevyed to them the Office of Mayor Usq; quindenam Sancti Martini, and also recites which Office was seized into the Kings hands by the Justices of Eyre in the Tower of London, and he was willing to continue it longer to them, ex gratia speciali he did grant them the said Office Quamdiu. &c.

Then the second part of Pat' Rolls in 20 E. 2. it is recited, that the King had seized the Office of the Mayoralty, and had replevied it from time to time; and that one Hamond de Chigwell was made Mayor, the King had excepted of him for Mayor, Et Rex volens eis gratiam uberiorem facere, grants him the Office of Mayor.

Now my Lord, these seizures shew plainly that the Franchises of the City were forfeitable; for either they were seized upon matter of Record found for a Forfeiture, or else upon some matter which was to be a ground of a Forfeiture. So then they were absolutely gon, and I do not find that these were ever taken out of the Kings hands by Process of Law, but were restored by Grace and Favour; for till the 20 E. 2. it appears, that they so long continued in the Kings hands, and he absolutely disposed of them.

Here is now a Favour to them, and a plenary restitution. Thus it stood in the Reigns of E. 1. and E. 2.

Now the next thing will be for their Act of 1 E. 3. which they back with my Lord Cokes observation upon it, that it was Authoritate Parliamenti. Now truly my Lord, there is no such Act of Parliament that is any where extant. For it is not in Print, neither are there any Parliament Rolls of E. 3's time till 4 E. 3. And he that cites it, my Lord Coke himself, cites no Roll at all for it; so that where we shall find this Act of Parliament, truly I do not know. But this Act at best amounts to no more, than that for any personal Trespass of Officers, the Liberties of the City should not be seized; but that signifies nothing, for that is not our Case. There are Acts of the Corporations not of particular Officers; though I cannot but observe how the Law was taken to be at that time before this their pretended Act, even for the Offence of private Officers, and that appears to be the Law too in the Case of 9 E. 1. which I cited before, which was only the Offence of the Mayor of Sandwich, who refused to answer for a Trespass and a Rescue, was committed, and the whole Liberty seized.

Now this Act of 1 E. 3. be it what it will, though they would take it in that sense, that no forfeiture should be incurred for the Trespass of an Officer, yet I find quite the contrary thereunto, and that it hath not prevailed even in that sense. For 5 E. 3. rot. claus. 14. there the King did discharge one from the Office of Mayor, and commands the Aldermen and Comminalty to chuse another. Now this my Lord I take to be not so much a punishing of the Officer as a

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breaking in upon the Franchiſe it ſelf. But I ſhall ſhew more fully in the Reign of R. 2. that this was done.

Yet I will firſt take notice of the Statute of R. 2. which is the next thing that they rely upon; and this, with ſubmiſſion, is no Act of Parliament neither; for though my Lord Coke in his 4th Inſt. 205. ſays, this is the Statute mentioned in our Books, which ſupports the Cuſtoms in London to deviſe in Mortmain, and other Cuſtoms againſt Acts of Parliament, and cites Authorities in the Margent; yet, my Lord, I have looked, and can find none of them to ſpeak to the purpoſe for which they are cited, but the Book of 7 H. 6. fol. 1. where the cuſtom of London to deviſe in Mortmain is in Queſtion, and there it was ruled a good cuſtom, becauſe of the Statute that confirms it after the Statute of Mortmain, but ſays, that Book Quere the Statute, ſo that they were not well apprized of the Statute in thoſe days, tho this were the foundation of all the reſolutions of that kind.

It appears by the Roll that it is no Act of Parliament in the nature of it, for its 7 R. 2. N°. 37. 'tis a Prayer of the Commons, That there might be a Patent granted to the City, confirming their Liberties, Licet uſi vel abuſi fuerint. And the Anſwer was, Le Roy le veult; but this is no Act of Parliament, it is no more than a confirmation of the Letters Patents, which had been primo R. 2. Beſides further, there never was any Patent granted in purſuance of this Act: And yet 'tis plain, that if it had been ſo, it would only have extended to Forfeitures that were paſt, but could never amount to a Diſpenſation or Licenſe for the future. And, my Lord, this appears by theſe Authorities and Records that I ſhall now cite. The 1 part of Pat' Rolls. 16 R. 2. Membrano 36, 37. whereby it fully appears, That notwithſtanding theſe pretended Statutes, there was no ſuch Priviledg in the City, but that for the Offences of their Officers or themſelves, the Franchiſe ſhould be ſeized.

But, my Lord, I muſt a little obſerve, that truly the City have attempted to raiſe themſelves above the fear of any Judgment in any of the Kings Courts; for in primo R. 2. Parl. Roll 126. there they Petition for a Confirmation of their Charter, with a Clauſe of licet non uſi vel abuſi, which was that they then would have to be done in Parliament for them. But they do likewiſe deſire in their Petition, that notwithſtanding any Statute, Priviledge, Charters, Judgment made or to be made to the contrary, their Liberties might be confirmed; of this 'tis ſaid the King will adviſe. There is in 1 R. 2. Parliament Rolls 121. as pleaſant a Petition as the other, they there do deſire, that the interpretation of their Charter may be left to themſelves; and where it is doubting, ſuch meaning as they ſhould put upon it ſhould be allowable. But to that the Kings Anſwer was, That he would make the interpretation of his own Charters according as his Counſel ſhould adviſe. So that I obſerve, they would feign have been abſolute, but they could never do it. It hath always been denied them. So that from what was done at this time and after 7 R. 2. it does appear plainly, that there

was no difference between the City of London and any other Corporation, only this is really the greatest. But as all greatness is the Kings Favour; so when men forget their duty in abusing the Kings Favour, this great Court is the place to put them in mind of it. I come then to the third Question:

III. Whether the Act of the Mayor, Aldermen and Commonalty in Common Council assembled, be an Act of the Corporation, so as to make a Forfeiture of the whole? And with submission my Lord, that will be pretty clear too upon these Reasons:

1. First of all, the whole Corporation is fully represented by them, notwithstanding the disparity of number set forth in their Rejoynder.

2. Again, All By-laws and Ordinances made for the good Government and Order of the City, are certainly the Acts of the Corporation; but the sole power of making those Laws is in the Mayor, Aldermen and Common Council, and therefore sure the whole power of the Corporation is in the Common Council.

3. They have the sole power of the Corporation-Seal. They can bind all the whole Corporation by any alienation to, or charge upon their Inheritance; and by consequence they may surrender all or any of their Franchises, and then as I said, they may forfeit them.

4. They have pleaded that there hath been time out of mind a Common Council, consisting of the Mayor, Aldermen, and two hundred and fifty Citizens, who are called the Commons of the City. So that it shall be intended now, that as they have prescribed for it as incident to their Corporation, it was part of their Original constitution to be thus represented by them, and ruled and governed by their Laws: But there is another reason for it, and that is, that it is an inseparable incident to a Corporation, implyed in Law without grant, that they have a power to make By-Laws to bind the Corporation, without which there were no government in a Corporation; and therefore a mis-user of that power must be a forfeiture of their Corporation, because 'tis a breach of their Original Trust: 22 Assiz. pl. 34. there is this Rule given, and a true one it is, Where there are many Franchises granted which do not depend one upon another, there the mis-user of one is a Forfeiture of that one which was mis-used; but where there are several parts of a Franchise depending all upon the said Franchise, if any part be mis-used, the entire Franchise shall be forfeited. As for instance, if a man have a Fair, a Court of Pypowders is incident to it, the mis-user of that Court of Cypowders, is a forfeiture of the whole Fair it self; for where any part is abused that is incident to an entire Franchise, that abuse forfeits the whole. And this is the Opinion of Palmers Reports in the Case of the Corporation of Maidenhead, where 'tis doubted whether the Market was forfeited for taking too much Toll, because the Toll was not inseparably incident to the Market, and so was not dependant upon the entire Franchise, and there the rule is taken as I have said before, that the mis-user of a part of an entire

entire Franchiſe, or a power that is incident to it, is a forfeiture of the Franchiſe.

Then my Lord, if they cannot forfeit here, the whole power of the Truſt of the Corporation is repoſed in them, and may be miſ-uſed by them, to the Oppreſſion of the Kings Subjects, and there is no remedy, if they ſhall not be puniſhed at all. For it is much harder to ſay, that ſeveral Acts of all the particular perſons, ſhould forfeit the Corporation, than that their Joynt Act ſhould do it. But this my Lord, is an Act contrary to the truſt upon creating the Corporation, and may be a miſ-uſer to the prejudice and oppreſſion of all people; and if this ſhould not forfeit the Corporation there is no remedy at all, but the power remains of oppreſſing as it did before.

Now my Lord, I think, with ſubmiſſion, I have made it pretty plain; and as they are not diſtinguiſhed from other Corporations in point of priviledge as to forfeitures, ſo this is their Act, and ſhall bind them, being done by their Repreſentatives.

IV. Then the fourth point will be, Whether theſe Offences ſet forth in the Replication are Forfeitures?

1. The firſt is, the making of that Law in the Common Council for the levying of ſums of mony upon the Kings Subjects, and the actual levying of thoſe ſums accordingly; and this they juſtifie under their preſcription to have reaſonable Tolls, as they ſet forth in their Pleadings, from all Perſons that come to their Markets to ſell Proviſion there, and power to reduce their Tolls to a certainty by an Act of Common Council. This is their Juſtification; ſo that, my Lord, the firſt thing to be conſidered is,

I. What right they have to theſe Tolls or Sums of Mony aſſeſſed by the By-law; and then

II. Whether if they have no right, their taking upon them to make a Law be a Forfeiture?

For their Right, that depends upon a preſcription to have reaſonable Toll, as they ſet it forth, and this as they have pleaded, it appears to be no Right at all; for a Preſcription to have Toll and Tollage, not ſhewing how much in certain, is void; for reaſonable Toll is not incident to a Market, but the Party has it by the Kings Grant, and ſo 'twas adjudged in this Court, Mich. 39. & 40. Eliz. cited by my Lord Coke in his Second Inſt. 220. So if the King grant a Toll, if he do not in his Grant aſcertain how much ſhall be taken for Toll, that Grant is void: And ſo is the Preſcription too, as you may ſee in the Corporation of Maidenhead in Palmer's Reports, fo. 79. grounded upon 9 H. 6. 45. & 11. H. 6. 19. and ſo he cites the Opinion of Popham in the Caſe of Heedy and Weeldhouſe, for no Subject can preſcribe to have Toll, but by the Grant of the King.

But, my Lord, this is not properly a Toll neither, nor in the nature of a Toll; for that is always paid by the Buyer, and never paid before a Sale; but here all that comes to the Market, whether they buy or not buy, ſell or not ſell, they muſt pay by this Law.

My Lord, I confess there may be a custom for Persons to pay for Standings in a Fair or Market, as that Case was 9 H.6.45. but yet that must be prescribed for in a certain Sum, which is not done here. And this customary Payment is in the same nature as a Toll traverse, or a Toll through, which cannot be in an uncertain Sum; for they are all by prescription, and a Grant of them now uncertain would not be good.

But, my Lord, however, Judgment upon these Pleadings must be given against the City; for either the Prescription, as they have set it forth, is good, or it is not good; if it be good, then the Traverse that is taken is well taken, to wit, that they have no such Custom, and they ought to have taken issue upon that which they have not done; for, my Lord, they have taken issue thus, That, time out of mind, they have had reasonable Toll of all Persons coming to the Market to sell their Provision, without tying of it to the reasonable Toll assessed and reduced to certainty by the Law; and this is naught; for tho they had a reasonable Toll in general, taking the Prescription to be good, yet if either that reasonable Toll in the use of it were not taken in that manner, or to that value that they assess by their By-law, then have they done wrong; and therefore our traverse is proper to their reasonable Toll, that they had not, time out of mind, such a Toll as they set forth; for it must be such a reasonable Toll as may answer to that which is assessed in the By-law, and that they have not put in issue. For the King, when once he hath granted a Market, cannot after grant Toll to that Market, because it is a free Market, and the People have right to come to it as a free Market; neither can they, when once by custom they have exercised their Power of assessing reasonable Toll, alter that at their pleasure; for it being once set, all People have right to come upon such terms: And if they increase the Toll, under pretence to reduce it to certainty, it will be void; for they may lower their Price if they will, but they can never come to increase the Penalty. If therefore they have done ill in not taking issue upon the Traverse, which does take in the full substance of their Rejoynder; if it be good, then Judgmene must be given against them upon that reason; so then, my Lord, the Question will be,

Whether the making of a Law to raise Mony at large upon the Subject be a Forfeiture of the Charter? And truly, my Lord, that it is. For

I. 'Tis the usurping of a Power that they neither can have, nor have by Law.

II. 'Tis a Breach of the Trust annexed to the Corporation; for 'tis a Misuser of the Franchise to the oppression of the Kings Subjects; and therefore the Charter must be forfeited, and not the other Franchise; not the Franchise of a Toll, for they have none; not the Franchise of the Market, for that would be nothing. If the Market be forfeited, it must either be extinguished or kept; if it be extinguished, 'tis a punishment to others that did not offend; and if it be kept, tho it be forfeited, 'tis no punishment to them that do offend: And 'tis a Question whether a Market may be forfeited for taking unreasonable

Toll

Toll, and that appears in the Caſe of Maidenhead. And as my Lord Coke ſays upon the Statute about taking Outragious Toll, the Franchiſe ſhould be ſeized only till it be redeemed by them.

But my Lord however, without going far into that matter, this Offence lyes not only in taking the money, but in taking upon them, and uſurping a power to make Laws to raiſe money. They have taken upon them a Legiſlative Power to oppreſs their fellow Subjects, that is their Offence, and that is a miſ-uſer of their Franchiſe. My Lord, in the Caſe of Ship-money, it was not the Quantum of money that was raiſed that was complained or quarrelled at, but it was the manner of levying of it without an Act of Parliament. The Logick and Conſequence of that was it which was ſo much debated and ſtood upon. So here, the abuſe and the offence is the making the Law, and the conſequence of that; for by the ſame reaſon that they have a Preſcription to lay ſo much, they may have a Preſcription to lay ten times as much. So that upon what I offer upon this point, I conceive it ought to amount to a forfeiture of their Charter, and the loſs of their Corporation.

Then the next thing will be that which is the laſt matter, that is the Petition, and that is of a ſtrange Nature; where the Offence is not only in Preſenting, but in Printing and Diſperſing of it; it charges the King with interrupting the publick Juſtice of the Nation, and the making the Neceſſary Proviſions for the Security of his Proteſtant Subjects; for, my Lord, to ſay, that the Prorogation of the Parliament, which is the Kings Act, who ſurely has alone, and none but he, the undoubted Prerogative of Calling, Proroguing, and Diſſolving Parliaments; to ſay that Act of his was an Interruption of Juſtice, is all one as to ſay, the King did interrupt: and 'tis done by them as a Corporation; 'tis the Act of the City in their Common Council in the Name of the Corporation; and as we have pleaded it, the Mayor, Citizens and Commonalty in Common Council did do it, which ſure is the Corporation, as they would have it. And that I rely upon for the reaſons I offered before upon that point.

Then the matter of this Petition is, the taking upon them to cenſure the King and his Government by this Petition. The Printing and Diſperſing it, is now publickly Scandalizing and Libelling the King; for 'tis in the nature of an Appeal to the people: 'tis unlawful to Print any mans private Caſe, while it is depending in any Court of Judicature before it comes to Judgment, becauſe 'tis an Appeal to the people. And that was my Lord Chief Juſtice Hales Opinion in Colonel Kings Caſe. And the ill conſequences of ſuch proceedings are ſo many, and the danger ſo evident in theſe Licentious days, that I do not know indeed whether it may tend.

The fact is confeſſed by them in their Rejoynder, but they ſay they did it to alleviate mens fears, and quiet their minds abſq; hoc, that they did it aliter vel alio modo. Surely my Lord this is no ſort of excuſe in the world, nor is it capable of any. They have owned

owned the thing, but they have excused it in the manner of doing thereof. And I may venture to say the Traverse is impertinent: Suppose a Man be Indicted for publishing a Libel, and he owns the Fact, but doth traverse absq; hoc, that he did it malitiose, or with an intent to defame, that surely would be an idle thing; for those are constructions that the Law puts upon it, and are not matters traversable, or to be put in issue. But if the Fact be done, the Law says 'tis maliciously done, and with such an intention. Therefore a confession of the Fact is a confession of all the consequences that the Law puts upon the Fact.

My Lord, this can amount to no less than the forfeiture of their Charter, not only for the greatness of the Offence, but because otherwise the Law would be unequal; for if this were the Case of a private common Person, he must be fined and imprisoned during the Kings pleasure, as was the Case of Harrison in I.Cr. 503. for words spoken of Justice Hutton. Now, my Lord, a Corporation is not capable of suffering this Imprisonment, and therefore 'tis a much greater Offence in them, as the Body is greater than any particular Member: And then, that which is a greater Offence would have a less Punishment if the Charter it self were not forfeited, than it would if a particular Person were punished. And give me leave to apply here the Reason of the Earl of Gloucester's Case, that I cited before, Quia Dominus Libertatis puniretur in eo quo deliquit. So they shall lose their Charter for the abuse of that Power that was entrusted with them by their Charter. Therefore upon the whole matter, I do humbly pray your Judgment for the King, that they may be outed of their Franchise of being a Corporation.

Sir

Sir GEORGE TREBY for the CITY.

De Termino Sancti *Hillarii*, Annis Regni Regis *CAROLI* Secundi 34 & 35, Annoque Domini 1682.

In Banco Regis die Mercurii 7 *Februarii*.

Dominus Rex verſus Majorem, Communitatem, & Cives Civitatis London.

May it pleaſe your Lordſhip,

I Am of Counſel in this Caſe for the Mayor, Commonalty, and Citizens of London.

The Record hath been truly opened by Mr. Solicitor in all particulars, except an omiſſion of one or two, which I ſhall mention.

The Information ſets forth and charges, That the Mayor, Commonalty, and Citizens of London, had by the ſpace of a Month before the Information, uſed, or claimed to uſe without any Warrant or Royal Grant, the Liberties therein ſet forth; that is to ſay, to be of themſelves a Body Politick and Corporate with ſuch a Name, and by that Name to plead and be impleaded, to anſwer and be anſwered: And likewiſe to make Sheriffs and Juſtices of the Peace; but as to theſe, there are only Imparlances, and I ſuppoſe Continuances. But as to the firſt Article, the Defendants Plead and Preſcribe, That they are a Body Politick time out of mind; and then they ſet forth indeed ſeveral Acts of Parliament and Charters of Confirmation. To this Mr. Attorney General doth Reply two things:

Firſt, He takes Iſſue upon the Preſcription, That they are not time out of mind a Body Politick with ſuch a Name; and then he aſſigns a Forfeiture, which Mr. Solicitor indeed does call two Cauſes; but they rather ſeem to be but one joynt Cauſe; but yet take them to be two.

The firſt is,

That the City did aſſume upon themſelves a Power to meet and make Laws for the Government of the City, and thereupon did make the Law which is now in queſtion: And thereby did levy, and order to be levied, for one Horſe-load of Proviſion ſo much, &c. and that this ſhould be paid to the uſe of the City, and for default of paying, the perſons denying to pay this Rate, ſhould be removed from their Standings in the Market. The ſecond Branch is, The Petition, and therein are thoſe Words which Mr. Solicitor hath repeated about the Prorogation of the Parliament.

And to all this the Defendants do Rejoyn, That the City of London has time out of mind been seized of these Markets; and they say, That the City of London is the Metropolis of the Kingdom, and consists of above Fifty Thousand Citizens and Inhabitants; and that (at their proper Costs and Charges) they are to provide, and always have provided a Market-place to sell Provision in, and also Officers for the preservation of good Order, and regulation of that great concourse of People that comes thither, and that they have always amended and cleansed the Markets; and for these Charges of the Market-places, and Officers and Cleansing of the Markets, they have always received, and ought to receive reasonable Tolls. They say that time out of mind there has been a Common Council in the City, and that for the like time there has been a Custom, that they should make By-Laws for the better Regulation of the Markets, for the ordering where such and such Markets should be held, and for the assessing and reducing to certainty the Tolls and Rates that are to be paid by Persons coming to the Markets, so as such Laws be profitable to the King and his People, and agreeable to the Laws of the Kingdom; and then again they set forth the several confirmations of their Customs and Priviledges by Acts of Parliaments and Charters.

And then, as to the second Branch of their Forfeitures, they set forth, That there was such a Plot, and such Procedings in the Courts of Justice against the Conspirators, and that there were several Judgments and Executions upon it; and they set forth several of the Kings gracious Speeches to his People in Parliament; amongst other things, That he did there in his Speech therein mentioned, recommend to the Lords and Commons in Parliament assembled, to pursue the further Examination of the Plot; adding, That he thought not himself nor them safe till that Matter was gone through with, and that the Lords in the Tower might be brought to their speedy Trial, that Justice might be done. They set forth likewise an Address of both Houses for a Fast, wherein they desire that the King would issue forth his Proclamation, which Proclamation is accordingly issued, and in that it is expressed (I cannot repeat the words, but to this purpose) That the Dangers impending could not be prevented, but by the Blessing of God upon the Councils of His Majesty and the Parliament. Then they set forth, That the Parliament was preparing several Bills for the preservation of His Majesties Person and the Protestant Religion, and the Peace of the Kingdom, and those Bills could not be Enacted elsewhere, and that they were then depending: And they set forth further, That the Parliament was Prorogued before those Bills were Enacted; And they set forth also, That the Lords impeached could not be Tried, but in Parliament; And, that by the Law of the Land it is lawful for the Kings Subjects in their Distresses, and for redress of Grievances humbly to Petition the King for Remedy in that behalf; and that for satisfaction of the Citizens who had made their Applications to the Common Council, and for the alleviating of their Fears, and out of their Zeal for the preservation of the Kings Person, and the Protestant Religion, they did give their Votes to this Petition, as is charged; And they give their Reasons for it, that is, it was Ordered to be printed, to the intent that false Rumors (concerning the

Citizens

Citizens Petitioning of the King) might be prevented, and the Enemies of our Lord the King from proceeding in their Conspiracy be deterred, and the Fears and Perturbations in the minds of the Kings Subjects might be allayed, and that the Citizens and Inhabitants of the said City might better know what was done upon their application to the Common Council.

My Lord,

I have taken some Notes of what Mr. Solicitor has said; but I beg your Lordships leave, that I may first deliver what I have prepared upon the Argument; and afterwards I will talk upon my Notes, and give particular Answers to the particular things he has insisted upon, for so much of them as I shall not Answer in my Discourse, which I must beg your Lordships patience in; for I fear I shall be pretty long.

I shall go on upon the same Points Mr. Solicitor has done, and endeavour to meet him, and give an Answer in all particulars, and shall add a Point or two which he has not mentioned, as particularly; That this Information (as it is here laid upon this Quo Warranto) is not brought against right Persons; for it is brought against the Mayor, Commonalty and Citizens of the City of London. Whereas it ought to be brought against particular Persons for usurping such a Corporation, if it can be brought at all.

The first thing that I shall go upon, is,

That a Corporation cannot be Forfeited; For now we must begin as it were from the Replication, for there is disclosed all the Matter, upon which the stress of this Point lies.

And that a Corporation cannot be Forfeited, I think will appear by opening the notion and nature of a Corporation, which you may find in my Lord Cokes 1st Inst. fol. 202, 250. He says, It is a Body to take in Succession, framed as to that Capacity by the policy of Man, and called a Corporation; because the Persons are made into a Body, and so are of Capacity to take or Grant, &c. And he says, That Persons capable of purchasing are of two sorts; Persons Natural created of God, such as private Men, as *J. S.* and *J. N.* and Persons created by the Policy of Man, as Persons incorporated into Bodies Politick. So then if this be the true Notion of a Corporation, then all the question is, Whether there shall remain such a person in the World as this Corporation of the Mayor, Commonalty and Citizens of London? 1. Inst. 202. 250

And that this is a meer Personality and Capacity will further appear even by this Quo Warranto it self, which says, That we did claim and usurp to be a Corporation under such a Name, and thereby to plead and be impleaded, to answer and to be answered: So that there is no more now can be considered in this Record, but whether we have or can have the Capacity of being Plaintiff and Defendant.

My Lord, In Brooks Abridg. tit. Corporation (I cite not what is said there as an Authority, but only as an Opinion) he joyns the Cities Corporations and Capacities together: I say, it is only the Judgment and Notion of the man, who your Lordship knows never uses to joyn any words as Cities, but what are Synonimous: and Brooks Abridgment.

there he joyns Corporations and Capacities, to shew the nature of a Corporation is a Capacity. And suitable to this is what Justice Windham says in Dr. Patrick's Case; A Corporation is a meer Capacity, a civil Capacity, says he, I do call it an *Ens rationis*; whether he did affect that Word because it was in the Case of a Man in the University, I cannot tell; but the meaning was, that this was the Notion of a Corporation, that it was an invisible Person and Capacity only.

Now, My Lord, I do not love to litigate about Words; I must confess that Mr. Solicitor does not speak without some Authority when he calls a Corporation a Franchise; but I say it is not properly a Franchise, to have a Power to be impleaded and to plead; for as to that they are Consequents, which belong to the Person rather than a Liberty or Franchise that is superadded to it. Therefore in Hobart 210. Norris and Strap's Case. The Case of the Wardens and Fellowship of the Weavers of Newbury; I think it unnecessary to cite the whole Case, but there my Lord Hobart says, Tho Licence or Power to make Laws is given to a Corporation by a special Clause; yet it is needless, for I hold it to be included by Law in the very Act of Incorporating; and so is also the Power to Sue and be Sued: Such Body is a Person that must answer the Law as a Defendant, and Sue as a Plaintiff.

Hob. 210.

But I do agree, I say, that there is one Case, and yet but one in all the World wherein a Corporation is called a Franchise; and it is in Cokes Entries, tit. Quo Warranto, Placito primo; A Quo Warranto is brought against several Persons, to shew by what Warrant they claim divers Liberties, Privileges and Franchises, as to be of themselves a Body Politick and Corporate, by the Name of the Burgesses of Helmesley in the County of York. So that under that general word I confess it may be called a Franchise; and the rather, because Mr. Noy (a Man of great Learning) in his great Argument of Fulcher and Heywood's Case in Mr. Justice Jones Reports, says 'tis a Franchise, for it was called so in such a Plea.

Co. Ent.

But now, My Lord, that it is not in its own nature forfeitable, is made plain by all those qualifications that have been attributed to it, and Expressions in our Law Books about it: As, that a Mayor and Commonalty, or Body Corporate, can never die, 1st Inst. fol. 9. b. 3 Coke 60. a. 2 Bulstr. 233. 21 Edw. 4. fol. 13. A Mayor and all the Officers; but the Commonalty have succession in perpetuum, and can never be said to die: And this Notion, my Lord, has gone further than England: I beg your Lordships pardon if I take the liberty to cite a very Learned Author, Grotius, in his Book De jure Belli & Pacis, lib. 2. cap. 9. He says, Cities are Immortal; and a City does not therefore cease to be a City, tho' all the Citizens of it should die.

1 Inst. 9. b.

But the dissolving of a Corporation by a Judgment in Law, as is here sought, I believe is a thing that never came within the compass of any mans Imagination till now, no, not so much as in the putting of a Case. For in all my search (and upon this occasion I have bestowed a great deal of time in searching) I cannot find that it ever so much as entred into the conception of any Man before; and I am the more confirmed in it, because so Learned a Gentleman as Mr. Solicitor, has not cited any one such Case, wherein it has been (I do not

not say adjudged, but) even so much as questioned or attempted; and therefore I may very boldly call this a Case primæ impressionis.

1 Inst. fol. 13. b. there it is said, if Lands holden of J. S. be given to an Abbot and his Successors, in this Case, if the Abbot and all the Convent die (so that the Body Politick is dissolved) the Donor shall have again his Land, and not the Lord by Escheat; so that he does allow a Body Politick may be dissolved indeed, but it is not properly a dissolving, nor a dying of that Body; but a taking away of the Subjects in which it did subsist, or to which it did adhere. And therefore unless it be by such an accident, as all of them dying, or by violence, as in the Case of the Monks of Bangor, I never heard before that a Corporation was dissolved: To be sure not by a Judgment in Law. My Lord Rolls in his Abridgment part 1. fol. 514. tit. Corporation, at the letter, J. makes it a head of one of his Titles, how a Corporation can be dissolved? And therefore was led very properly to enquire into all things that might dissolve a Corporation; for that Book is in the nature of a Common-Place Book. Now under that head he cites not only the Common Case, if all the Members die, then 'tis a dissolution; but he says further, and he cites an Authority for it, If a Corporation consists of so many Confratres, and so many Sisters, and all the Sisters die, this Corporation is dissolved, for both the Brothers and Sisters are integral parts of the Corporation, and it cannot subsist by halfs; But he does not go further, he does not say, if they shall levy too much Money upon the Market, nay, he does not say, if they should commit Treason (if it were possible they could do so) which had been more proper to have instanced in, he being naturally led to it under that Title; for that is a thing that happens a Thousand times oftner than the death of all the Members. And under favour, if the Law be so as they would have it, every penalty levied upon a By-Law does endanger the Corporation every whit as much as this of the Rates upon the Markets.

Littleton, My Lord, in his Sect. 108. (it is a general Rule, but commonly taken notice of and may be in this Case) says there, upon the Statute of Merton; an Action will not lie against a Guardian for the disparagement of his Ward, because it was never heard of from the time of the making of that Statute, that such an Action was brought; and yet he adds that the Words of the Statute might very properly ground such an Action: Now, my Lord, that was a matter of 200 years before Littleton wrote, that that Statute was made; and 'tis possible such an Action might have been brought but not remembred, and that is, an Action brought by an inferior against a superior, the Ward against his Guardian; but here this Suit, if it can be brought, is brought by the King, who is Supream, and therefore there can be no reason to think, but he would have brought many of these Suits to have dissolved Corporations, if by Law it might have been done.

Besides my, Lord, Acts of Parliament can never be antiquated; because a Statute is a Law in writing; but the Common Law is not a Law unless it be repeated, and practised: And so is Davis's Opinion in the Preface to his Book, and in the Body of his Reports too: he says that when People have tried and used such an Act, and

found it useful and profitable to the publick, and fit to be practised, that Act of repeating begets a Custom, and so becomes in its name and nature the Common Law of the Land. But now, my Lord, if I can challenge all the Times, and all the Precedents that ever were in this Kingdom, to shew me where ever there was a Forfeiture of a Corporation, or a Judgment given against a Corporation to Forfeit it, no nor ever thought of till this last year, I think I may assert 'tis not Law. And if it extend to this Corporation of London it must have extended to all Corporations formerly, and it must do so to all still.

In the Case of Ecclesiastical Leases in the 5th Report, and in several other places, there is a large discourse of what Bishops and other Spiritual Corporations might do at Common Law; 'tis said they might Grant for years, for Life, in Tail, or in Fee; but what might they Grant? Their Lands and Tenements, their Possessions and Revenues; but never one Word that they could Grant away themselves or Politick Capacity; still that which was their very being was not in their own power to Grant away, and if it were not to Grant, much less were it in their own power to Forfeit: For if it should be so, there is never an Hospital in England but if it have taken too much Toll, were to be destroied, and never a Bishoprick, Deanry and Chapter, (nay almost particular Parsonages (for they are Spiritual Corporations too,) and all the Corporations of England are under the same Rule of Law,) if they have transgressed in any of the Kinds assigned here for a Forfeiture, but were to lose their very being.

That these were in the power of these spiritual Corporations at the Common Law, no Man doubts; and if any Man dos tell me that the restraining Statutes do extend to the Corporation, truly I must deny it; for it is Lands, Tenements, and such things that are mentioned; and there is Provision made only against Grants, and not against Forfeitures. A Forfeiture, Mr. Solicitor says, must be a great breach of Trust, and so it must indeed; and how then should they answer for it? If a Bishop, or a Dean and Chapter have Lands in Fee upon Condition, and they break the Condition, their Lands are gone: But if that breach of Condition should amount to a Forfeiture of their being a Corporation, that were very strange. This would dissolve and destroy all the Colleges in the Universities, and all the Charity in the Kingdom, for every breach of such Condition would be a breach of Trust.

My Lord, There was a very proper time when this might have been thought of, if it could have been maintained for Law, and that was in the time of H 8. he sent out Dr. London and others with a Commission of Inquiry, to examin into all the Misdemeanors of the Monastries, Convents, and Colleges. To what purpose was all this done? Could he not have brought Quo Warrantos against them? He needed not have hunted much for Misdemeanors, and Offences; if they had but raised five pounds, nay, for ought I know, if they had but raised five pence upon a Market, or the like, they had all been dissolved; and 'twas so much the worse in this Case then, for this reason, in those Regular, Religious Houses and Corporations, the Body of them was dead, and the Abbot or Head was only to appear

for

for them, and plead and defend for them; Therefore 'tis said in the 1 Inst. 103. a. that in a Quo Warranto against an Abbot, or Bishop, or a Prior, for Franchises and Liberties, if the Abbot or Prior disclaim alone, this shall bind their Successors; And if it were possible that there might have been a Forfeiture; Yet without so much as troubling himself to Assign that Forfeiture, he might have gone that way by Quo Warranto to get a Disclaimer. 1 Inst. 103. a

And 'tis very well known there were Men put in those Houses to be Heads of them, on purpose to try if they could surrender them: And that they needed not to have done, nor have asked the consent of the Members to have surrendred; For they needed only to have brought a Quo Warranto; for after the Renunciation of the Pope's Power and Supremacy, King H.8. did grant his Conge d'eslire to choose the Heads of those Corporations; and when they were once there, and a Quo Warranto issued, the Abbot or Prior might say; this Corporation is but a Liberty or a Franchise, and I am the King's Creature, I will disclaim the Liberties, and there is an end of the Franchise; but this was not thought of in diebus illis.

I think my Lord, that in Case of a Town the Law is clear, tho' I shall not at present much contend with Mr. Solicitor upon that Point, that London stands upon greater and better circumstances than other Corporations and Towns. It is all one as to the main Points whether it do or not, tho' I shall say enough as to the particular reason, to answer what he says to the contrary, by and by: But yet this I will say, A Corporation in a Town, is more protected in Law than others are. For says my Lord Cooke, if a Town or Burrough does decay, yet it shall remain a Town or Burrough, as is plain in the instance of the Burgesses of old Sarum, and the like. So that it seems, that tho' the death of the Abbot and his Convent does destroy that Corporation, yet the dilapidations and decays of a Town does not destroy it, but it remains a Town still. Nor is the Liberty of sending Burgesses to Parliament destroyed or Forfeited.

I confess My Lord, I do not see but that at this rate a Quo Warranto may be brought against a particular Man, to know by what Authority he claims to have the Liberty of a Subject to Sue and be Sued, to Plead and be Impleaded; 'tis a capacity that's born with him, and belongs to him as he is born in England, or as he is by Act of Parliament naturalized and made a Subject; especially in the Case of Denization it comes home to the Point; Why should not a Quo Warranto be brought against a Man, to know by what Warrant he claims to be a Denizen, and in that respect to Plead and be Impleaded, to Sue and be Sued? These are relative capacities that stick and adhere to the person, and if you once constitute the person, you shall never say he shall not have the incidents to such a person.

This Case indeed, my Lord, that I put last, is so gross a thing, that it was never drawn in question, tho' some others have, as Dignities, Lordships and the like, and yet no Quo Warranto was ever brought or can lie in these Cases: And that is the Opinion upon that great and solemn Argument of the Case of the Earl of Oxford in Mr. Justice Jones Reports; where it was held that an Earldom, or the like,

is a personal Dignity, and such a one is in the nature of a publick person, and by no means can part with or Surrender that Capacity: And so your Lordship knows, it was adjudged lately in the House of Lords in Parliament, upon the Petition of the Lord Purbeck; they all Voted there that Peerage could not be determined nor Surrendered, no altho' there was a Fine levied, and all the instruments of Law that could be contrived to Annul it: and I cannot see that if this Capacity of a Corporation be liable to a Forfeiture, all others must be so too.

There is one Capacity indeed, and a small one, that a Feme Covert has by the Custom of London, that she shall Trade without her Husband, as sole Merchant, and be Sued so, and shall Sue; the Husband indeed is named, but only for conformity; the Action is against her, and the Judgment against her severally, and the Debt must be levied of her Estate; can it be thought that a Quo Warranto lies for such a mere Capacity? No more than it can lie to know by what Warrant such an one claims to be an Executor or Administrator, or an Overseer of a Will; and yet there an Action is brought against them in such a Capacity, and as such they Sue and are Sued, tho' perhaps they would be glad to be rid of that Capacity too.

My Lord, 'Tis true what my Lord Coke says in his 2 Inst. 664. There was a Custom to take Tiths of Marriage goods within the Dominion of Wales, which is taken away by a Statute; and there he says, if a Custom that was once reasonable and tolerable, become grievous, and not answerable to the reason whereon it was grounded, yet it cannot be taken away but by Act of Parliament; for an Inheritance once fixed cannot be taken away but by Parliament; If this be so of a little custom in Wales, how much more is it so of this great Corporation of London, and which is more yet, of all the Corporations in England?

My Lord, Mr. Solicitor was pleased to say that a Corporation might be Surrendred. I must confess I should not willingly have meddled with that Point at this time; but since it has been mentioned, I will only endeavour to say so much as may answer him in what he intended it for, as a ground for the better proving the Point of Forfeitures. I believe Mr. Solicitor, (because he cited no Authority for it) might rest very much upon the supposed Surrenders in the time of H. 8. The Surrenders that were made of the Monasteries then. And I do believe he does presume as others have thought, that those were Surrenders of their Corporations: Truly, My Lord, I believe they were not, and to prove that they were not, I shall rely upon the Dean and Chapter of Norwich's Case, 3 Coke 73. which is also reported in 2 Anderson 120. and I shall at the same time mention another Case, and that is the Case cited before of Fulcher and Haywood, in Jones 166. and in Palmer 491. where the same question comes to be debated, whether the Deanry and Chapter of Norwich was given up and destroyed by their Surrender?

My Lord, In the Report of that Case in Palmer, I will first remember your Lordship of what is said by Whitlock in his Argument of that Case, it is fol. 501. of that Book; there Whitlock sitting in this very Court,

Court, ſays, That altho' the King can create and grant a Corporation, yet he cannot diſſolve a Corporation; And a Dean and Chapter being a ſetled Corporation, by their own act cannot diſſolve themſelves; being once a ſetled Corporation cannot be ſelo de ſe. But I ſay further, thoſe Acts of Parliament made in H.8. time, (they are all in your Lordſhips Memory) that of 27 H. 8. gave all the Monaſteries under two Hundred pounds a year to the King; that of the 30 H. 8. cap. 13. recites that ſeveral other Monaſteries had been Granted, Surrendred, and forfeited to the King, and it ſays that the King ſhall have them, &c. I do allow there are the Words Surrendred and Forfeited, and I mention them on purpoſe to anſwer them, and this is the Anſwer I give them.

First, For the Word Surrender, when the Monaſteries were ſurrendred, that was only a Grant of the Lands, and nothing elſe; the word Monaſtery can carry nothing elſe in it, and ſo is Wortly and Adams's Caſe in Plowdens Com. 194. where there is a great diſcourſe of the ſurrenders of the Monaſteries and the Acts of Parliament about them, and what enſued upon them; but in all that Book it was not by any means admitted, that the Corporation or any of that was by theſe Surrenders diſſolved; and, my Lord, as to the Word Surrender, it is fully ſatisfied by the Words Lands and Tenements.

Secondly, As to the word Forfeited, my Anſwer is this, the Corporation is not named in the Surrender, and therefore cannot be preſumed to be intended to be ſurrendred, and then there are other things, as Leets, Liberties and Franchiſes, which are named, and are capable of being forfeited, and ſo the word Forfeited may be applied to them; and very properly, for they are liable to a Forfeiture, but the word Corporation is not at all mentioned.

But for another underſtanding of the word Forfeited, I deſire your Lordſhip would give me leave to cite a Caſe in the 2d Part of Rolls Reports, fol. 101. (which is called the Continuation of his Reports) and it agreeth exactly with the Hiſtory of thoſe Times: There were ſome Abbots, as the Abbot of Glaſtenbury, the Abbot of Redding, and the Abbot of Colcheſter that were ſtiff Men, and would not ſurrender; thereupon the King gets them indicted of Treaſon (the ſtory is well known how he handled thoſe Men) and thereupon they did graft a kind of Opinion, that their Land was forfeited by this means: for a ſmall pretence would ſerve then to put People into an Act of Parliament of Attainder: And he tells you that was the Reaſon, why they put the word Forfeited into the Act of Parliament; And then diſ-bottom themſelves upon the Statute 26 H. 8. cap. 13. that Statute that gives to the King any Eſtate of Inheritance whereof any one is ſeized that commits Treaſon: tho I do not by any means allow it to be Law, that thoſe Clergy-men by their own Acts could forfeit ſo much as the Lands of their Corporation; but it was taken for a Pretence, and ſo they put in the word Forfeited.

Beſides another thing is this, the ſame Statute ſays, The King ſhall have and enjoy the things there given him, in the ſame manner as

they the Abbots, Priors,&c. should have enjoyed them: Now if the King shall enjoy all as they did, and in the same manner, what then must he enjoy? It may well extend to Lands, to Leets, and to Markets and particular Franchises, all those things the King may have; but shall the King have their very Corporate Capacity? Shall the King have and enjoy the Liberty of suing and being sued by the name of the Abbot and Prior, or the like? That Office sure he cannot execute, it is inconsistent with sense or reason to say, that he shall have it, or can have it. And in these Statutes they did doubtless accumulate Words to make them look the bigger; because they were to make a great Present to H.8. by these means.

Then comes 32 H.8. cap.24. that relates to the Corporation of the Knights of St. John at Jerusalem; and it seems by the penning of that Statute, that this very question had been taken notice of since the time of the making of the last Statute in 30; for there 'tis declared, That that Corporation of St. John at Jerusalem shall be dissolved, and that the King shall have their Lands, so that their taking notice and providing directly to dissolve it shews, that they had by that time considered, that neither the surrender of their Lands, nor the vesting of them in the King, had done any thing to the Corporation, save only they had deserted their House and fancied themselves dissolved, because they were turned out of their Possessions.

My Lord, In the great Case of Haywood and Fulcher, 'tis again and again said there, That the Surrender of the Dean and Chapter (where they surrendred all their Church and all their Franchises and Hereditaments) was no surrender of the Corporation, no tho the King did take it to be a Surrender, for he accepted it as a Surrender, and granted them a new Incorporation of the same Name, only adding Ex fundatione Regis *Edwardi* Sexti. So that he did take it to be a good Surrender; but it was adjudged that it was not a good one, and so it is held in 3 Coke 73. And so says the Dean of Wells's Case in Dyer 273. the Surrender is, Diaconatus Ecclesiæ Cathedralis de *Wells*, one would think it impossible to have surrendred any thing by a stronger Word; but yet there they say 'tis not good without an Act of Parliament.

And whereas it hath been sometimes said, as it is there, they were dissolved, and they have been dissolved by the Surrenders, and the like. There is a very good Answer given to all that discourse in Palmer 495. where 'tis said, when they speak of a dissolution by Surrender, 'tis a relation of Fact only, and not of Law: that is, they were dissolved in Fact, so as that they did desert their House, and did demean themselves as if they were Discorporated, but they were not so in Law: For they fancied a Corporation could not be without Lands, and so when their Lands and Church were given up, they thought all was gone and dissolved: For (said they) a Dean and Chapter must be a Dean and Chapter of some place, and when the Land is gone how can they be said to be of such a place? No, said the Judges there, that is no Reason at all, for the Corporation was before they had any Lands, and if those Lands were all evicted, or they all disseized of them,

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yet they are a Corporation ſtill. And in Rolls Abr. 2. part 185. 'tis ſaid the Abbies came to the King by the Statutes of Diſſolution; ſo that they had no opinion that the Surrender did carry even their Lands, tho I do admit they did carry their Lands; but I may ſay they could carry no more, they could not carry their being of the Corporation.

There is a Caſe in Dyer 282. and 'tis the only Caſe that ſeems againſt us in this point; There were two Deans and Chapters of St. Patrick and Chriſt Church in Dublin in Ireland; and theſe both and not one of them, were together one Chapter of the Archbiſhop of Dublin time out of mind, and one of theſe Surrendered, and then their Houſe was uſed for a place for the Courts of Juſtice, and continued ſo; And then a Leaſe is made by the Biſhop, and that confirmed by the only remaining Dean and Chapter, which was that of Chriſt-Church: And whether that Leaſe was good or no was the queſtion, and truly that was the only queſtion that is made there in that Book: and ſo 'tis of little Authority as to any thing elſe: But 'tis true, that that Book does ſay in the end of the Caſe, that the Leaſe was held good, Quia Corporatio & Capitulum Sancti *Patricii* prædicti fuit per donum & ſurſum redditionem Decani, & Capituli prædicti legitime diſſolutum & determinatum. My Lord, to that I Anſwer:

Firſt, There was no occaſion for this Reaſon, becauſe it did digreſs from the main Point in the Caſe, as it is truly obſerved in Palmer fol. 502. Next,

Secondly, It was a private extrajudicial Opinion; it was the Opinion of but five Judges, and for ought appears ſeven might be of another Opinion, and yet the Caſe was ſent for the Opinion of all the Judges here, becauſe the Lawyers in Ireland it ſeems did make a great doubt of it. And it was alſo an Opinion and Judgment of the favourable Side, for it was to confirm a Predeceſſors Leaſe. But,

Thirdly, Certainly (my Lord) the Caſe is miſtaken, for the Surrender could not be good without the conſent of the Biſhop, which is alſo added in the end of the Caſe there; He is the Patron and muſt neceſſarily confirm their Acts to make them valid, eſpecially they being inſtituted, and given to him for his Advice in the Government of the Church and the diſpoſal of its Lands.

Fourthly, my Lord, I have this further Anſwer to give it, that my Lord Coke ſays in 1 Leon. 234. (and 'tis not denied) that this Surrender was by Act of Parliament, or elſe it had not been good. And beyond that,

Fifthly, I have by me a Manuſcript of my Lord Dyer's Reports, the moſt Authentic one, which was my Lord Cokes, and has his own hand to it in ſundry places; and by that he does often correct the Prints of Dyer, and ſo alſo he might have done in this Caſe; for there all theſe Latin words are left out, there is not one of them, nor any ſpace left to put them in, nor any blot for their being razed out, it is an Addition of the Publiſher, and printed in another letter than the reſt of the Caſe is; 'tis not in that Book which I take to be the trueſt Original of Dyer. Beſides, my Lord Cokes Anſwer, that it

was by Act of Parliament makes an end of all. And truly, my Lord, that the determination of such things should be by Act of Parliament I shall cite you one Authority, and I borrow it from Mr. Solicitor who has mentioned it before, 'tis Rot. Parl. 8 R. 2. num. 11. and 'tis taken notice of by my Lord Coke, who cites it in his 4 Inst. 228. To which, I add also, That the Liberties were seized and the Case determined in Parliament: There the Case was this. The Mayor, Bayliffs and Commonalty of Cambridge had committed a notorious Uproar and Tumult; they had assaulted the Colledges of the University, they had imprisoned the Vice-Chancellor and some of the Scholars, they had extorted from them two Releases and a Bond of 3000 Pounds; and after all this great Uproar and Tumult a Writ went out, but whence? from the Parliament, and there they are summoned to Appear, and there they are to shew cause why the Liberties should not be seized, as forfeited; and there upon full Hearing it was adjudged by the King, with the full consent of the Lords and Commons in Parliament, that the Liberties should be seized as forfeited: All this is taken notice of by my Lord Coke. But yet, as if he thought it not enough to have said all this in the Body of the Book, he puts down in the Margin of that Book these words, Nota, It was done by Act of Parliament. And that it was taken, that a Corporation cannot be dissolved but by Parliament, I shall cite your Lordship Davis's Reports, fol. 1. b. where he says, That neither by the Surrenders, nor by the Acts of Parliament that gave their Possessions to the Crown, were those Corporations dissolved; the Surrenders did not do it, and the Acts of Parliament did not intend it.

But, my Lord, I shall dismiss this Point, for indeed it will not conduce to the Question, which is not, Whether a Corporation be Surrenderable, or no; but, Whether it be Forfeitable?

Now there are many things that are renounceable, that yet are not forfeitable; An Annuity pro Consilio impenso & impendendo may be surrendred, and so is Empson's Case in Dyer, fol. 2. but it cannot be forfeited for Treason, 'tis a thing that adheres to the person, and there is a privity in it that makes it not forfeitable; so a Guardianship in Soccage, a man may renounce it as well as he may Executorship, but they are neither of them forfeitable; and so is the Trust of a Freehold. and several other like things.

My Lord, As to what Mr. Solicitor has said, That a Corporation may be Seized, and therefore it may be Forfeited; I think certainly that is no good conclusion at all. Those words of Seizures of the Liberties, and Seizing into the Kings Hands, he has with great Learning collected a great many Records about them, and they make a great sound at first, but when they are narrowly looked into, they make nothing of Argument at all; they have slept a long time, and are but imperfectly remembred; they may serve to amuse People, but when they are considered they will signifie very little. Vet. Nat. Br. fol. 161. He distinguishes there (and every Body must) between the Causes of the Seizure of a Franchise into the Kings Hands, and the Causes of

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a Forfeiture, and there he sets down several things, and then adds stude differentiam istorum, so that there is a difference, and that difference ought well to be advised upon. In 2 E. 3. 28, & 29. Scrope gives the Rule, says he, in some Cases a Franchise ought to be taken into the Kings Hands, and in some Cases it ought to be seized till a Fine be made to the King, and in some Cases it ought to be Forejudged; and so he makes three distinctions. Now, my Lord, this will answer (as I shall observe by and by) all that Mr. Solicitor has produced about Seizures, either by Act of Parliament, or for a Fine, or for a Distress for want of an Appearance. If a real Action, there goes out a Grand Cape, and there the Lands shall be seized into the Kings Hands, and that looks big upon Record; But if you come to know the meaning of it, 'tis only that the Sheriff should return Issues upon it, and that's a very little thing; the King has no pretence to the Title of the Land, nor is the Suit his Suit, but the parties: So the seizing of a Bishops Temporalities, and the Lands of Priors, Aliens, and the like. But Words must have a reasonable and legal construction; as when a Statute is made, That if a man does so and so, his Body shall be at the Kings will, and he shall do with him at his pleasure, (as in the Statute of Maintenance, and the Statute against Transporting of Money,) that is nothing but that he shall Forfeit the use of his Body, and the Liberty of his Body, and shall be Imprisoned for the Offences.

All this I shew, to distinguish about this word Seisure, and by that distinction to answer the weight of all the Records that Mr. Solicitor has cited. Those Seisures that were of any Towns, I say, they were only till they had made a Fine to the King, and when the King had so Seised them, what did he do? He put in a Custos upon them, which was to keep them in good Order; he put them into a safe Hand, but it was never intended to suspend or destroy the Corporation: For the Corporation went on as it did before, it might Sue as it did before, and was as liable to be Sued as before; it was to put a Guard upon them, not for their Destruction but for their Preservation; to quell Insurrections, to keep Peace and good Order among them; the Seisure of the Liberties was not a seising of the Corporation, because a Corporation is not a Liberty, it cannot be Seised; for the King cannot exercise the Liberty of a Corporation, the King may Seise the Mayoralty, and the King may put in such a Deputy that may be a Custos, he may Seize the Sheriffalty, he may Seise a Leet, or a Market, or he may receive the profits of them and execute by Deputy the purport of them: but what can he do when he has seised the Corporation? Can he himself be the Mayor, Commonalty and Citizens of the City of London? Or can he put in any one to be such Corporation? It is not a thing Manurable, 'tis not a thing Seisable, nor ever was Seised; for the King can Seise nothing, but what he can have and use when he has Seised it. And therefore all those Custodes that were put into London upon the Seising of the Liberties, were only in the nature of the Lord Lieutenants, that were to keep Order in the City, and prevent Breaches of the Peace: but still the Customs, the Courts

and the usages of the City went on as they did before; I cite not any Record indeed for it, because there is no need, 'tis so well known; but if there be any doubt of it we will make it appear, that during all those times Mr. Solicitor speaks of, who has cited a great many Records, and if he can find as many more, yet still all along the City was in Statu quo, as to their being a Corporation: they did Sue and were Sued, and they did all manner of Acts as a Corporation, which shews that it was not so much as Suspended, much less Forfeited. This is without contradiction very plain, during all the time of those Seisures. If it had been Forfeited at all, it must have been extinct; and if there could have been a Judgment given against it, it could not have been taken into the Kings Hands, but it must have been an Ouster of the Liberties.

In Yelverton there is a Case of the King against Staverton, a Quo Warranto is brought against Staverton for keeping a Court Leet, and a Court Baron, within the Hundred and Mannor of Warfield; The Defendant disclaims the Court Leet; as to the Court Baron, the great doubt is whether a Quo Warranto can be brought for it, it appearing that he had a Mannor; for that is inseparable to a Mannor. For he that has the Demesnes and Copyholds, must call his Tenants together to do Suit and Service; and 'tis agreed indeed a Quo Warranto will lie. But Fleming Chief Justice and Fenner doubted of it. And in that Case Judgment must be, that he shall be ousted of the Liberty, and not that it shall be Seised; for the King cannot use it, and therefore 'tis impossible, that it should be taken into his Hands: and so 'tis as I said of a Bishop's Temporalities, and the Lands of Priors Aliens and the like: it is a meer personality and cannot be Seised.

But Mr. Solicitor says a Corporation can commit a Crime; truly I do very much question that, nay, I shall deny it by and by: but if they do commit a Crime, the punishment must be by other means than a Forfeiture; And I will cite your Lordship a parallel Case; for as I said before, a Corporation is an ability or capacity like that of a Denizen, and so can no more be Forfeited than a Denizen-Ship can. There is Verseline Manning's Case in Lane's Reports, 58. and the same Case is in Rolls 1. Abr. 195. in an Office of Intrusion, It is there found, that Verseline Manning was a Denizen by Letters Patents, and in the Letters Patents there was a Clause, as is usual in Patents of Denization, Proviso, that Verseline Manning the Denizen should do liege Homage, and that he should be Obedient and observe the Laws of this Realm. The Office finds that he never did Homage, nor was Obedient to all the Laws of the Realm; and it was urged that consequently he had lost his Denization, for Breach of the Condition. No, says the Court there, by no means, this must have a reasonable construction, not to take away his Capacity of being used as a Subject, and so Suing and being Sued; but the Proviso is to be interpreted thus, for his non-obedience of the Law, he shall Forfeit the penalties appointed by the Law: So, I say, a Corporation if they do offend the Laws, shall Forfeit and undergo the penalties appointed by the Law, but not be discorporated, any more than a Denizen Undenizened.

My Lord, The next Point that I go upon is, what I at first mentioned,

ed, and that is this, That this Quo Warranto, is not well brought, and there can be no Judgment given against us upon it, if we should admit (which I do not) that a Corporation is Forfeitable, or if I should grant (which I do not neither, but shall come to that afterwards) that the particulars assigned are causes of a Forfeiture.

Now this Quo Warranto is brought against the Mayor, Commonalty and Citizens of the City of London, that is to say, against the Corporation, (for that is the Corporate name, and no Man sure is so vain as to think that can be the Christian Name or Surname of any natural person,) therefore I say 'tis brought against us as a Corporation, and charges us, that we have usurped the Liberty of being a Corporation, under such a name, for a month before the Information brought. Now, My Lord, I say this is impossible and this is Repugnant; for the question is here, Whether we are a Corporation, and that is a Liberty to be Plaintiff and Defendant? And then comes Mr. Attorny, and admits us to be Defendants; for he Sues by that name, and yet the very question that he does bring us to dispute of is, Whether we are capable of being Defendants or no: that is just as if he should have said, I have brought you into Court, and you must be Defendants, or else I have brought you here for nothing, for there is no cause depending without parties Plaintiff and Defendant, and then I will Assign for the cause of my Suit that you are no Defendants; nor is it possible for you to be Defendants.

My Lord, this is plain reason, but I shall strengthen it with great Authority, and that is the Case upon a Writ of Error, out of Ireland to reverse a Judgment given in a Quo Warranto against the Corporation of Dublin: 'tis in Palmer the first Case, and 2 Rolls fol. 113. & 125. A Quo Warranto is brought against Cusack and other Aldermen of Dublin, who pretended to have Privileges, and a Guild, and to be a Corporation, and this I presume is for their being a Corporation; for there is a Curia advisare vult as to the Corporation, and so 'tis not put in the Case, but 'tis also brought for several Liberties that they did pretend to claim; as that they only and none others, should Sell and Buy all Merchandizes, and no Body should Buy of another, or Sell to another, but to them; that all Merchandizes should be brought to their Common-Hall, &c. Now and to these Liberties they are forejudged, that the Liberties should be seised and they ousted, As to their being a Corporation Curia advisare vult, so the Case is in Palmer: But in the other Book in 2 Rolls 115. It is agreed if a Quo Warranto be brought to dissolve the being of a Corporation, it ought to be brought against particular persons, for the Writ supposes that they are not a Corporation; and 'tis to falsify the supposal of the Writ to name them as a Corporation. Now here this Writ it supposes them to be a Corporation, or else they could not be Defendants, and then it comes and falsifies that supposal, by assigning that they are no Corporation, nor ever were, or if they had been they had Forfeited it, and so all the Foundation that this Writ stands upon is destroyed.

In this Case of Cusack, I am assisted further with a Report of it in my Lord Chief Justice Hale's Book; A Report of very great Autho-

rity with all Men of our Profession, and there he says expressly; If a Quo Warranto be brought for the usurping a Corporation, it must be brought against particular persons, because it goes in disaffirmance of the Corporation, and Judgment shall be given that they be ousted of the Corporation, but if it be for Liberties claimed by a Corporation, then it must be brought against them as a Corporation.

Lord Chief Justice, What Folio is it in my Lord Hales's Book, Mr. Recorder? Mr. Recorder. It is my Lord Hales's Common-Place Book, which is in Lincolns Inn-Library, fol. 168. plito. 7. and this is our Case directly. If you go about to say, our Corporation is Forfeited or must be dissolved, nay more (as you say here) we never have been a Corporation, or by Forfeiture our Corporation is lost so long ago, then there is nothing can come before the Court properly, but that J. S. and J. N. particular persons have usurped to be a Corporation when they are none: This Information is brought in Disaffirmance of their being a Corporation, and therefore there must be set up some body capable of being a Defendant in such a Suit; and who can that be but particular persons, which ought to have been named, as they are in that Case of Cusack. For as Judgment of ouster of particular Liberties given of particular persons, will not bind the Body of the Corporation; so the Judgment of the not being a Corporation, will not be good, unless it be given against those particular persons that usurp the Corporation. And I do say further, that individual Freemen of London, cannot possibly be bound by this Judgment: for they are not here before you, nor were they ever so; for 'tis the Corporation here that is made the Defendant. And I do not now consider the number that make up that Body, (that London being so populous alters the Case) for the Case is the same, if it were the Corporation of Queenburrough, or any other petty Corporation. Suppose 20 Men be a Corporation or pretend to be a Corporation, and you come to enquire by what particular means, these 20 Men pretend to be a Corporation, or as the words of this Quo Warranto are, usurped to be a Corporation; you must not say that they are one, and then say that they usurped it, for 'tis not the Corporation that usurps to be a Corporation, that is impossible, but 'tis the particular persons that usurp to be a Corporation when indeed they are not. A Corporation may usurp a Market, as they may usurp a Leet, but they cannot usurp themselves. In Townsend's Book of Printed Precedents, (which is a Laborious thing, and wherein he has Collected all the Precedents, he could meet with of Quo Warrantos) there is but one in all that Collection, that was brought against any persons upon the score of being a Corporation: and what is that? How was it brought? Not against a Corporation that was, but against a Corporation that never was, that is to say, a parcel of People, that took upon themselves to be a Corporation when they were not, and that is the same single Precedent in Coke's Entries 527. Tit. Quo Warranto. The King against Helden, and other Burgesses of Helmsley, for usurping to be a Corporation, by the name of the Burgesses of Helmsley. And how does the Attorney General there bring the Writ? He brings it against a particular Corporation,

ration, or elſe they could not be Defendants, and then it comes and falſifies that ſuppoſal, by aſſigning that they are no Corporation, nor ever were; or if they had, they have forfeited it; and ſo all the foundation that this Writ ſtands upon is deſtroyed. My Lord, in this Caſe of Cuſack I am aſſiſted further with a Report of it in my Lord Chief Juſtice Hale's Book; a Report of very great Authority with all Men of our Profeſſion, and there he ſays expreſly, If a Quo Warranto be brought for the Uſurping of a Corporation, it muſt be brought againſt particular Perſons, becauſe it goes in diſaffirmance of the Corporation, and Judgment ſhall be given, that they be outed of the Corporation; but if it be for Liberties that are claimed by a Corporation, it muſt be brought againſt them as a Corporation.

'Tis in my Lord Hales Common Place Book, which is in Lincolns-Inn Library, fo. 168. placito 7. My Lord, this is our very caſe; if you go about to ſay our Corporation is forfeited, or muſt be diſſolved; nay more, you ſay it has either never been, or by forfeiture it is loſt ſo long ago, then here is nothing can come before the Court. This Information is brought in diſaffirmance of the being of the Corporation, and therefore there muſt be ſet up ſome body capable of being a Defendant in ſuch a Suit, and that is, particular Perſons, which ought to have been named, as was in that Caſe of Cuſack: For as the Judgment of Ouſter of particular Liberties given againſt particular Perſons will not bind the Body of the Corporation; ſo the Judgment of not being a Corporation will not be good to charge or oblige particular Perſons, unleſs it be given againſt particular Perſons that uſurp the Corporation. The Individual Freemen of London cannot poſſibly be bound by this Judgment; for they are not here before you, nor were they ever ſued: For it is the Corporation that is here made Defendant; and I do not conſider the number that make up that Body, that London's being populous alters the caſe; for the caſe is the ſame if it were the Corporation of Quinborough, or any other petit Corporation. Suppoſe 20 Men be a Corporation, or pretend to be a Corporation, and you come to enquire by what particular means theſe Men pretend to be a Corporation, or as the words of this Quo Warranto are, uſurp to be a Corporation, you muſt not ſay, that they are one, and then ſay they uſurp it; for 'tis not the Corporation that uſurps to be a Corporation, that is impoſſible, but 'tis the particular Perſons that uſurp to be the Corporation, when indeed they are none. A Corporation may uſurp a Market, or they may uſurp a Leet, but they cannot uſurp themſelves.

It appears, my Lord, in Mr. Townſend's Book of printed Preſidents, a laborious thing it is, and wherein he hath collected all the Preſidents he could meet with of Quo Warranto's, and there is but one in all that Collection that was brought againſt any Perſons upon the ſcore of their being a Corporation: And what is that? how was it brought? not againſt the Corporation that was, but againſt the Corporation that never was, that is to ſay, a parcel of People that took upon themſelves to be a Corporation, when indeed they were not, and that is but one ſingle Preſident neither. In Coke's

Entries, 527. Tit. Quo Warranto, the King against Helden and other Burgesses of Helmesly for usurping to be a Corporation, by the name of the Burgesses of Helmesly: Now does the Attorney General there bring his Writ? he brings it against particular Persons. My Lord Hobart, who was then Attorney General, never thought he could have maintained his Quo Warranto, or expected Judgment against them, if he had brought it against the Burgesses of Helmesly generally, and then have said, that they were no Corporation; but he brings it against those particular Persons, and thereupon they come in and disclaim their being such a Corporation, and the having the other Liberties; and the Judgment is, That of those Liberties those particular People should be ousted, and should not intermeddle with them.

Now, my Lord, what Judgment can be given in this Case, that the Mayor, Commonalty and Citizens shall not intermeddle with the being of Mayor, Commonalty and Citizens? 'Tis a very reasonable Judgment that Helden and those particular Persons should not intermeddle with such a Liberty, or be in such a Corporation; but if such a Judgment be given against the City here, that would be as much as to say, That you have never been what you are, or you shall never be what you are, that is the English of it.

And, my Lord, I am sure as there never was but one Quo Warranto that we can find any printed President of against the being of a Corporation, so that very President is not against those that really were so, but particular Persons that usurped to be so. And if you search all the Records of this Kingdom, and all the Books in all the Offices, you will never find any that is brought against a Corporation, for being a Corporation, upon pretence that they might be made none by a Forfeiture; and no Prerogative of the King shall extend to excuse this, but his Action shall abate, if it be not right brought, as well as the Subjects, and so is Plowd' Com. fol. 85.

Further, my Lord, I have another Authority in this point, and that is in the Case of the Corporation of Maidenhead, which hath been so often cited by Mr. Sollicitor, and it is in Palmer, 80, 81. where 'tis said, When the Attorney General hath supposed them to be a Corporation, it is not usual to plead them to be a Corporation; otherwise if he had questioned them as Inhabitants of such a Town, then they ought to enable themselves: Those are the words of that Book: And what can be more plain? Here the Attorney General supposes us to be a Corporation, his Replication flies in his own Face; and he having supposed it at first, he is bound not to question us for our being a Corporation at any time after. As to the business of forisfecerunt, 'tis a strange and a new word that never came into any Quo Warranto before, that I know of; but we will accept the new word, but not the thing, and that they have forfeited by such and such Acts; this sure will be very hard upon us; for if it be a Forfeiture, it must relate to the time of the thing done, to the time of the making the Act of the Common Council, to the time of the Toll levyed, or to the time of the Petition; and if it do so, it must relate like a Forfeiture for Treason; it must reach all mean Acts,

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all the Leaſes that we have made ſince are gone; all the Judgments that we have given in any Cauſe are Coram non Judice, and void; all the Acts of the Corporation are overturned by this forfeiture, and we have been under a vaſt miſtake all this while. We have had no Mayors nor Sheriffs, no kind of Officers, no manner of regular and legal proceedings; but we have been under a great miſtake ever ſince this money was ordained or levyed. We have forfeited all; and that it is ſo, is plain, becauſe in all Quo Warranto's wherein perſons are convicted for uſurping of Liberties, there is a Fine ſet upon them for continuing that Uſurpation, and reaſon good; then if it be an Offence for continuing the liberty, we muſt be fined for doing it ever ſince the Forfeiture, when if Mr. Attorney General's Rule be right, there has been no ſuch Corporation; but we ought to have diſcontinued all our acting as a Corporation, and laid it down, and ſo every ſtep that we have taken ſince hath been irregular, and every Act void.

If ſo be an Action be brought againſt Baron and Feme, and the Plaintiff ſhould in his Replication ſay, they were divorced ſeveral years before, has he not undone all his pleading? Here then is our Caſe, Mr. Attorney General admits us to be ſueable, and yet charges us to have no capacity to be ſued. I do implead you, but you have no right to be impleaded; here he brings us into Court, and when he has brought us here, he quarrels with us for being here; he makes us Defendants, and then queſtions whether we ought to be ſo; and ſo his great Charge againſt us is, that we are what he would have us to be, and what he hath made us to be; for if a Month before the Information, the Corporation was not, but the very being of the Corporation was uſurped, how come we at the Months end to be Defendants? Here comes a new creation interpoſed in that time, and makes us parties ſueable in the Court, when by the Charge in the Information we were not ſo a Month before.

And then my Lord the Information is not quite ſo bad, but the Replication is worſe; firſt he takes Iſſue that we never were a Corporation at all; and the next thing is, if ever you were a Corporation, you have ceaſed ſo to be, becauſe you have forfeited it ſo and ſo ſeveral years ago. This is juſt then to put a common Caſe (and I confeſs a very familiar one it is) If I ſhould bring an Action againſt a man, and when he hath pleaded, I ſhould by way of Replication ſet forth, there never was any ſuch man as the Defendant, and take Iſſue upon it; or if there were, that he was dead Ten years ago: And yet this is the ſubſtance of Mr. Attorneys Iſſue, and his Replication.

My Lord, the Authorities before cited in Palmer, Cokes Entries, Rolls, and my Lord Hales Common-place-book, are not all; for I have ſome other that never ſaw the light in Print yet, and that is the Caſe of the King againſt Bradwell and others, Trin. 18. of this King. A Quo Warranto was brought againſt them for uſurping to be a Corporation, or Company of Muſitians; it had been

a strange thing if the Quo Warranto had been brought against that Corporation, and then the Attorney General had said they were no Corporation, nor never were; there they did think best and fittest to go against Bradwell, and the rest, and that by name and only so, not against the Body Corporate. So in that Case of the Corporation of Worcester, which was lately tryed before your Lordship in this Court; When the Quo Warranto was brought against such men for usurping to be all Aldermen and Common Councilmen, if the Attorney General had once called them Common Council-men, it had been a great repugnancy for him afterwards to say that they were none, or if they were, that that priviledge of theirs was lost so long ago. So in the Case of the Quo Warranto against the Bermudas Company; it was against a Corporation, and against particular persons by name both. These things have been considered, and doubtless they have gone on in an ordinary way. I must confess, I was not privy to that particular Case, but by the Report of that Case, which I have seen, I have been informed that the Corporation never appeared; for they said, 'tis not sense for us to appear; for it being a Question by what Warrant we are a Corporation, it is not we supposing us a Corporation that do usurp, but the particular persons that do usurp, if it be at all usurped. Now my Lord if that had been a regular Suit, no doubt but there would have been Judgment against the Corporation, which there was not. And certainly the Replication of Forfeitures was not good against the Corporation, but against the particular persons only.

All Mr. Solicitors Authorities for Seizing hold true, if the Corporation would never appear: And what is the reason it should be brought against J. S. and J. N. but because Corporations do never appear in such a Case, in regard it were not congruous they should appear; for the Quo Warranto must intend it so, That they were not a Corporation in being, by implying a Forfeiture. Then say I, no Judgment at all can be given upon this Score, Non admittitur exceptio ejusdem rei cujus petitur dissolutio, a man shall never be admitted to controvert that to be in being, which he himself desires should be destroyed, and so has allowed it to be. Shall Mr. Attorney be admitted to deny the supposal of his own Writ? and truly I think I might very well leave this part of the Case, and this point, to Mr. Attorney General himself; for if he will have any thing to be answered by us, he must maintain us to be a Corporation capable of answering; and so I have reason to expect that against his own Replication he will be pleased to support the being of our Corporation, and so dismiss us hence.

II. My Lord, I have done with this Point, and now I come to the Replication, which indeed is a kind of a new Quo Warranto, for it brings in new matter, and therein they do charge two Forfeitures, the one is by reason of the abuse of the Market, the other is by reason of the Petition: My Lord, I shall answer both of them, That we were seized of the Market, that is pleaded and that is agreed: That we were

were ſeized of Tolls, and were to have reaſonable Tolls, that is agréed too; that there is a cuſtom in London to have Common Councils, and that this was by Common Council is agreed; all this is agréed by the Demurrer; that this Toll (though by the way I muſt confeſs, and will agrée with Mr. Sollicitor, that it is not properly to be called a Toll; for a Toll is only for Goods ſold; and when they are ſold, in recompenſe for the Officers attendance for the teſtification of the Contracts, and the entring them in their Books. But I agrée, this is not ſuch a Duty for Goods bought and ſold, but it) is for the accomodation of Perſons repairing thereunto for their Stalls; and if I would call it by any particular Word, I had rather call it Stallage than any thing elſe: It is for thoſe Accomodations which we have bèen at vaſt charge in preparing and providing, and for the maintenance of requiſite Officers, and for the cleanſing of the Markets. Now Mr. Sollicitor objects, That we cannot preſcribe for a Toll uncertain, and he cites the Caſe of Murage, and the like; and ſo I muſt confeſs, where Murage is granted, 'tis commonly a thing certain, ſo is Pontage, and the like; but I believe (if I had thought that it would have bèen a point inſiſted upon) I could have brought you Inſtances where Murage, and ſuch like things, have bèen granted in general, and they would have bèen ancient ones indéed: And there is a neceſſity for it in ſome caſes; for when a Town will repair its Walls, the charge may be greater or leſs, as the particular Accidents may be, and ſo perhaps a certain Duty would not do it. When a Wall is to be built, there the Duty may be certain; but when it is built, to kèep it in Repair, the Duty of Murage may be uncertain, according to the charge; and if the caſe be not ſo, it will come little to our purpoſe, which is a Duty upon a great and a continuing charge. I will name him ſome things that he muſt agrée, and I know he will grant, are uncertain, as Pickage and Stallage, which are Duties for picking in my Earth to dig holes for the Poſts of Stalls to be fixed in: now there can never be, nor ever was any circumſcribing in thoſe matters, for circumſtances in every of thoſe caſes muſt govern it. If I have occaſion for my Stall to uſe a foot of ground, one ſort of Sum is neceſſary; if ten feet, another Sum; it ought to be equal indéed, but it could never be good if it were limited to a Sum certain; and in all grants that ever were of Pickage and Stallage, they were never reduced to a certainty, and thoſe are things too that relate to a Market.

And ſo I take it to be for Keyage, Anchorage, and the like; for when there are Poſts or Places for Ships, to which they may be fixed, the Owner of the Port may have a compenſation for that, but that muſt néeds be uncertain, according to the circumſtances; if a Ship be bigger or leſſer, if a Ship ſtay a Month or a Day, 'tis not fit the ſame rate ſhould be paid, nor is it uſually granted by particular words, Co. Ent' 535. & 526. placit' 4. The King againſt the City of London for the Water-Bailage, and other things. They pleaded only a Right in general, and do not ſay what the Particulars were; and yet one of the things demanded in the Quo Warranto, was, as I

ſaid,

said, the Water-Bailage, which sure if any thing ought to be certain, that ought. In that Case it was good Pleading, though I think I could say more against it, than this thing that is in the nature of Stallage; so that all that Mr. Sollicitor hath built upon that must, I think, needs vanish.

My Lord, I do not think but London ought to be, and is as much under the obedience and correction of the King, as any City; but yet I believe in these Cases of their Customs, you will give that allowance and indulgence to it that all your Predecessors have done, which is greater than they have given to any other Corporations in the Kingdom, and that because it was London; that there should be such a thing as a Foreign Attachment, I think is hardly allowed in other places; I am sure I have known it deny'd in some, that a Contract in Writing should be equal to a Book Debt; that a Feme Merchant should sue or be sued without her Husband; or if he be named, he should be only named for conformity: You take notice that London is a Port-Town, and that Men that Trade there, sometimes go beyond Seas, and in their absence their Wives trade by themselves, and perhaps carry on distinct Trades while they are here: And so they may do in other places may be, but only for the sake of London do you take notice of these things there and not elsewhere; their Penalties that are sued for in their Courts, a great many of them are such as would not be well maintained in other Courts, or in any other place, and yet they are maintained there, as namely, That their Penalties should be sued for before the Mayor and Aldermen, when the benefit of them goes to their use; and yet that is allowed in the Eighth Report, notwithstanding the grand Objection, That they are in some sort Judges and Parties, Rolls 2 p. Abr. Tit. Prescription Letter H. fol. 266. No. 2. & 3. The City of London may prescribe to have a Court of Chancery in London of matters tryed in the Sheriffs Court, though such a Court cannot be granted by the Kings Letters Patents; but the Mayor and Citizens of York cannot prescribe for such a Court, because it were very dangerous that such petty Corporations should have such Courts. And whatsoever is said by my Lord Hobart in his Reports 63. I do affirm there is no Act of Parliament that erects a Court of Chancery in London, or the Cinque-Ports; if Mr. Sollicitor had strugled with me about the being, or not being of that Act of Parliament, I would have agreed with him that there was no such, sooner than some that he says are none. The Customs of London have been upheld; and I must confess I think that is very strange, even against the general Words of an Act of Parliament, 2 Inst. 20. A Goaler in London may permit his Prisoner, that is in Execution, to go at large with a Button in any place within their Jurisdiction, and 'tis no escape. And so is Plowdens Com. 36. A Citizen of London may set up one Retail Trade, though he was bred to another, notwithstanding of the Stat. 5°. of the Queen. And for a General Rule take that that is said in Palmer 542. Those of London may prescribe against a Statute, and the reason is, because their Liberties are confirmed by

Statute.

Statute, and other Towns are not. In Rolls Rep. 1 p. 105. Sprike againſt Tenant, my Lord Coke being then Chief Juſtice, ſays, We take notice of the Cuſtoms in our Courts, and other Courts in Weſtminſter-Hall, and in London. Fleetwood Recorder of London ſays a very ſtrange thing in 1 Leon' 284. Hollinſhead and Kings Caſe, and in 4 Leon' 182. That the King's Courts ought to take notice, that thoſe of London have a Court of Record; for if a Quo Warranto iſſues to the Juſtices in Eyre, it does not belong to them of London to claim their Liberties, for all the Kings Courts have notice of them. And truly I have been enformed, I mean by Copies of Records, that when the Juſtices in Eyre came to the Tower, this was a Priviledg allowed to them, they were not bound to ſet forth their Liberties as others were.

My Lord, I think this, as 'tis pleaded, is a Duty very juſtifiable, and very well payable, by vertue of this Cuſtom. I do agree, as I ſaid, a Toll is properly for Goods ſold, and this is a Cuſtom for the accommodation of thoſe that brought Goods to be ſold, and 'tis like that 1 Leonard 218. my Lord Cobhams Caſe, a Duty paid for the ſtanding in the Cellar, and there that is held to be good. In Rolls 2 p. of the Abridgment 123. Letter B. Hickman's Caſe. The Lord of a Mannor may preſcribe to have the eighth part of a Buſhel of Corn in four Buſhels that are brought to the Market within the Mannor in the name of the Toll, and that is for Stallage only, for it is ſaid there, whether it be ſold or not. And in the ſame Book, fol. 265. the City of Dublin ſet forth, that they are owners of the Port of Dublin, and that they maintained Perches in the ſaid River, to direct the Ships in the deep Channel, and that they kept the Key and the Crane, and therefore in conſideration of that, they preſcribed and demanded three pence in the Pound for all Merchandizes in the ſaid Port, and it was held good. Now I agree Toll-through that can't be preſcribed for ſimply and generally, but by Toll-through I mean as you know, for paſſing and re-paſſing through only, and not for ſtaying; but yet even that may be preſcribed for too, in conſideration of repairing a great High-way, or a very foul way, or maintaining a Bridge, and the like. And therefore if our Conſiderations here be as good, as that we maintaining thoſe great places may preſcribe for this duty, as for paſſing through the Streets, though it were no Market.

There is a famous Caſe reported in Rolls 1 p. fol. 1. & 44. And 'tis in 2 Bulſtrode, and alſo in Moor, it was the Caſe of the Bellman of Litchfield: A Preſcription is made, that the Corporation of Litchfield hath a Market, and they ought to repair the way to it, and to appoint a Bellman that ſhould ſweep the Market-place, and that for this the ſaid Bellman, time out of mind, had taken of thoſe that brought Corn to the ſaid Market, and opened their Sacks to ſell a pint of Corn, if but a Buſhel or under, if more a Quart. So that if it were opened and not ſold, yet he was to have that Duty, and that Preſcription was adjudged to them by all the Judges, and yet it does not appear there, whether the repair-

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ing that way cost them 5 s. or 5000 l. and yet by intendment they would not account it unreasonable, though it might have been urged it was very unequal; if they could take a Pint for that which was under a Bushel, perhaps they would take by that means, half of what the party bought; but if there were fifteen Bushels they had but a Quart, and this was objected as to the inequality of it; and yet they all passed over that by a reasonable intendment, and would not deny the Prescription to be good. And the Case of Cranage in Dyer, and the Case of 21 H. 7. 16. are admitted to be good Law, where the Town of Glouceſter prescribed for a Toll of Boats passing by the River near the Town.

Now my Lord for ours, there was very great reason to induce it, the great alterations that were made in London by the Fire; and it was not the first time that London was burnt: And if there should be War, and so great Alterations and Confusions, there were great cause that the City, that lays out great Sums, and must be at such a publick Charge, should not be losers by it.

And we do set forth more than they do in the Case of Litchfield, that we provided the Market-places at our own charge; and if they will use them, they must expect to pay some compensation for it; that we do kéep Officers, and pay them for cleansing and képing Order in the Markets: And above all that, we provide Standings and Stalls, and such Accomodations, and that I am sure is a Provision no Lord of a Market is bound to make unless he will, and therefore the Market-people that are accomodated by it have great reason to pay for it; and we pay all the Taxes for the Market-places, for the ground is ours; and that is not alledged in the Pleading indéed, but it must be implied, because we pay the Taxes, and they that have the Standings are not lyable to pay the Taxes: And so is the Judgment in Rolls, 2 p. 238. and the 2d Abr. 289. And in the Case of Cusack Justice Dodderidge says, That the redéeming of one Fair from the Abbot of Westminster cost the City of London 8000 l. for he had a Fair at Westminster, and a Market for 40 days, and that during that time no Sale should be in London, or the places adjacent, and a great Rate it was if it were so. The measure of a Toll is according to my Lord Coke 2 Inst. 58. when the thing demanded for Wares or Merchandizes does so burthen the Commodity, that the Merchant cannot have a convenient Gain by Trading therewith; and thereby Trade is lost or hindred, then 'tis an evil Toll. But here indeed the Market-people are better accommodated than ever they were; and Trade is so far from being discouraged, as that it is increased, as is implyed in the Replication; for 'tis said, we receive 5000 l. a year, which if it were so unequal, would not certainly be paid, nor could be, if there were not great Trade there. So that the increase of Trade is the thing complained of in this Quo Warranto. And the truth of it is, I have examined and looked into the Fact of these things, and there is nothing in this By-law, but what was really anciently paid, except only in one Instance, whether it

it were 6 d. or no, that was paid when a Cart was drawn by two Horſes, which now is but 4 d. and if we have increaſed the Toll, which I doubt whether it be ſo or no, 'tis only in a very trifle.

Now my Lord, this Caſe I think is a ſtronger Caſe than that in 5 Rep. the Chamberlain of London's Caſe, there is no conſideration of Stalls, or cleanſing the place, but only they had an Officer to ſearch and view, and that was a new appointment of their own; they could not preſcribe for it, but it was thought a penny was a reaſonable recompence, and the Subject had a benefit by it; and if he would bring his Cloth to London to be ſold, he ſhould come thither to have it viewed, and give a recompence for it. Now London is all Market indeed, every Shop is a Market; and it hath been well ſaid of the Judges ſeveral times in Weſtminſter-Hall, that London is the Market of all England, and there is never an Acre in England but is the better for that.

As to the Impoſition upon Coals, that is but an inducement, and an inducement is never to be relyed upon; 'tis not to be ſtood upon. And Mr. Solicitor did very honourably decline it, and did not make any thing of it, nor trouble the Caſe with it.

When the City did make this Act of Common Council, they did conſult with their Counſel for matter of Law, and with their Officers and Fellow-Citizens for matter of Fact, and did adjuſt theſe rates, and enacted them to be paid, they being reaſonable ones, and according to the ancient Uſage; but if they were miſtaken, it will be no cauſe for you to give Judgment againſt them for many other reaſons; As firſt, you cannot judge this to be unreaſonable. I have not heard one word ſaid that this is an unreaſonable oppreſſive Toll. Here is money levyed, what then? If it be a reaſonable ſum, 'tis not ſo great, it does not deſerve the name of Oppreſſion. I ſay 'tis not ſo great an Oppreſſion, if they ſhould have been miſtaken in the form of inſtituting the levying of it, if they might have done it under their Common Seal, and now they have done it without that by Act of Common Council. Nay, it does not deſerve that you ſhould judge it unreaſonable; you cannot do it here, for the conſiderations are meritorious and equivalent to it, the great charge they were at in Building, and they ſtill daily are at in cleanſing and repairing and providing Stalls. But however, the Caſe is not ſo diſcloſed here, that you can judicially determine this to be an unreaſonable Toll. According to the Rule in Cokes Magna Charta 222. the Toll of a Market need not be certain, only it muſt be reaſonable. And what ſhall be deemed reaſonable, the Judges muſt determine if it come judicially before them. So ſhall reaſonable Cuſtoms, and reaſonable Fines, and reaſonable Services, and reaſonable Time to remove Goods, and the like, they muſt be judged by the diſcretion of the Juſtices upon the true

state of the Case before them. Now this Case must have all its Circumstances stated and agreed by Demurrer, or found by Verdict. And so is 4 Rep. 27. b. and Hobart 135. and 174. as in the Case of Copyholders Fines, the quality and yearly value of the Land must appear, or else there cannot be Judgment whether it be reasonable or no. In the 13th Report fol. 3. & Croke Car. 196. where the Question was, Whether the Lord of a Mannor might assels two years and an half value of Copyhold Lands, according to the Rack-Rents for a Fine upon Surrender and Admittance, and upon non-payment to enter for the Forfeiture; as suppose Land, it be rented at 20 l. a year, here is 50 l. demanded for admittance; there it appeared judicially that it was unreasonable, and so it was adjudged, because the value was certain. But who can here say, whether the providing of Markets cost 5 s. or 500 l. it is not estimable. Perhaps we have overbought all these Tolls that they call unreasonable; we aver it to be reasonable, the Demurrer agrees it to be so, and you must intend it to be so, unless the contrary be set forth clearly in its circumstances; for he that will have a Forfeiture, must shew the circumstances to make it out.

My Lord, Another thing is this, to answer Mr. Solicitor in that point, I say, an unreasonable By-law is no reasonable cause or colour for forfeiting a Corporation, admitting it to be unreasonable, though I grant it not. My Lord Hobart in Norris & Staps Case, Hob. 211. says, that though power to make Laws is given by special Clauses in all Incorporations, yet it is needless; for that is included by Law in the very Act of Incorporating. For as reason is given for the natural Body for the governing of it, so Bodies Corporate must have Laws as a Politick Reason to govern them. Reason is a faculty in them as 'tis in a man, and may err; and therefore says he, if the King do grant Letters Patents of Incorporation to persons, and he doth thereby make Ordinances and By-laws himself, they are subject to the same construction and rule of Law, as if they were made afterwards by the Corporation. For the King can no more make an unreasonable By-law than a Corporation; but if the King do, shall that affect the Corporation, and make the Corporation void by way of repugnancy, or an instantaneous breach of Condition? no it shall not. And therefore as they may receive unreasonable Rules from the King, without defeating of the Corporation, or having their being thereby vacated, so they may make unreasonable By laws without the same danger of destroying the Corporation. The cases are very many wherein By-laws have been judged unreasonable; the truth of it is, there is a great misfortune in the penning and making of those By-laws; by some means or other there is something discerned that still proves an Exception to it, as we see in the Case of the Carmen and the Woodmongers; their By-law was made and re-made, and corrected

rected again and again, before it would be made to hold Water in this Court. So in the Taylors of Ipſwich's Caſe and Bradnox's Caſe, which was here lately. All theſe have been adjudged void; but what then? In all theſe Caſes it was never ſaid, hereby your Corporation is deſtroyed, you have erred in making a By-law, and therefore you have loſt your being of a Corporation. Beſides, if there were but a colour for it, and it were any thing tollerable, ſurely that were enough to make us excuſable in ſuch a matter. If it has been received as we agree it has, the Officers are Treſpaſſers, every individual of them are ſuable, and any man may bring his Action againſt them. But they that come to the Market think not fit to complain; if they did not like the Market, they would not come at all; and if they did not like the Payment, they would not come neither; and there is no levying of any thing unleſs they do come.

Now, my Lord, I will admit the levying and the receiving, and yet I ſay this is no forfeiture; for here is a miſtake of Law, or a miſtake of Fact, by colour whereof Mony is received: This by no means will work a Forfeiture of a Corporation, for at that rate every Penalty that has been levyed by a By-law will be adjudged a levying of Mony without Law, and ſo forfeit the Corporation, which has not been done in other caſes of By-laws, and thoſe much worſe than this; becauſe moſt of thoſe By-laws were made for levying Mony upon Men for exerciſing a Trade; and 'tis much more to ſay that you ſhould levy ſuch Sums of Mony upon every ſtroke of honeſt induſtry, whereby a Man gets his Livelyhood, than that you ſhall pay ſo much for your accomodation in my ground for the better vending your Goods. This hath been held good in ſome caſes, but in others it hath been held naught; and this hath all been received and levyed to the uſe of the City too, and ſo 'tis a levying of mony, whereby they have a great advantage; nay, 'tis worſe ſtill, becauſe it is impoſed by force, and recovered by force; but here 'tis a voluntary Penalty, no force, no compulſion, only the being removed from their Standings, no other Penalty, no Impriſonment, or the like; but if you do not like the conditions, you may be gone; I deſire you to walk out of this Market, if you don't like the price of the Proviſions; and to be gone from the Stall, if you don't like the price of the Standing. We were not bound to provide theſe Stalls for you, but having provided them, if you don't like them, you may leave them; but here is other caſes, the man is impriſoned, and ſued by Action for the Penalty; here at any time if you don't like you may be gone.

My Lord, I am very confident that if this be ſo, that all monies levyed by a Corporation without Law are forfeitures; or where the Law is miſtaken, then I dare boldly affirm, that we never were a Corporation two months ſince London was London, but by vertue of ſome old ſleeping By-law or other that has been ſet on foot, mo-

nies have bèn levyed, which perhaps will not be in ſtrictneſs allowed good: And if all theſe had bèn Forfeitures, we had bèn in a ſtrange condition, not one month or two ſhould paſs over us, but we had forfeited it; and never can there be perhaps a month to the end of the World, but we ſhould ſtill be forfeiting. And what is ſaid of us, may be ſaid of any other Corporation that happens to make By-laws. And I am ſure in former times there were monies levyed with a witneſs, I mean not the late times of Rebellion only, but an hundred years ago, ſtrange exorbitances of that nature were committed by London and other Corporations; then they went by way of Information, but never was it thought that it could affect the being of a Corporation: If it ſhould do ſo, I do not know whither it will go at laſt. The greater or the leſſer Sum is not that that will difference the Law. Is it a Forfeiture to receive 5000l.? Why is it not a Forfeiture to receive 500? Why not to receive 5 s.? Why not to receive 5 d.? No bounds can be ſet for that, if it be a tranſgreſſion of the Law; here is a Tort and a Wrong done by your By-law, that you have levyed 5 d. and therefore all this great Inheritance of London, this that is the greateſt Inheritance of the Kingdom is forfeited for a Trifle, upon three half pence, or a Basket of Eggs.

Nay my Lord, To go further I ſay, if this be a Forfeiture, I ſay 'tis only a Forfeiture of the Market; nay, not ſo much neither, 'tis only a Forfeiture of the Toll: my Lord, I cannot but once more mention that excellent Notion of my Lord Hobart, That the Power of making By-Laws is included in the Act of the Corporation; for as reaſon, ſays he, is given to a natural Body to govern it, ſo a Politick Body muſt have Laws, as its reaſon, to govern it. Now then the making of theſe Laws is but the exerciſe of that reaſon, declaring the mind of the Corporation, for the direction of the Officers of it what to do and what to take; and 'tis but like the mind of a man that directs his hand what to do. For this is not like the Duty of Stallage, that relates to the Publick, and relates alſo to ſomething that before they had no intereſt in, but only relates to the adminiſtration of a private property, and directs the manner of that adminiſtration. They are Lords of the Market, and that is caſual to them, it is not neceſſary for them ſo to be. If any Corporation bid their Officers levy ſo much mony; ſuppoſe they bid them take more Toll than is due, or levy more mony for Rent than is due for the Land, why this might be looked upon as a great Breach of Truſt and Encroachment: They ſhould have had but 6 d. and they took 7 d. and this done by Act of Common Council, which is their way of expreſſing their mind; yet ſurely it would be no Forfeiture, becauſe the Land is their own, and the adminiſtration of it belongs to them only in point of intereſt and property. Suppoſe a Gentleman has a Market, and his Reaſon, which is his By-law, as my Lord Hobart ſays, puts him upon taking of Toll, but he does

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a little miſtake the Law or the Cuſtom, he bids his Servant take ſo much, which perhaps may be too much for Toll, does this deſtroy his capacity of Suing and being ſued? You may as well ſay ſuch a particular perſon ſhall not plead, or be impleaded, if he do ſo and ſo. May this, if he were a Denizen, does not forfeit his Denization, and yet a Denizen is as perfectly a creature of the Kings as a Corporation is. It is Baſilicon Doron, it is the bounty and kindneſs of the King to one born out of his Dominions, to give him the capacity of a Subject, to ſue and be ſued, and the like, which cannot be forfeited, even for breach of Conditions in the Letters Patents of Denization. For this is within Verſellin Mannings Caſe, if he does not obſerve the Laws of the Land; 'tis true, he muſt be puniſhed for it, but he ſhall not be undenizen'd.

My Lord, There is a Statute which I think is a moſt plain Declaration of the Law in this Caſe, and 'tis the Stat. of Weſt' 1. ca. 31. Some call it the 30th, becauſe they differ in the numerating and heading of the Chapters. 'Tis the Statute concerning thoſe that take Outragious Tolls in Market-Towns. The Statute ſays, Le Roy prendra le Franchiſe del' March en ſa maine. The King ſhall ſeize the Franchiſe into his own Hands. My Lord Coke in his Comment upon that Statute ſays, He ſhall ſeize the Franchiſe of the Fair or Market till it be redeemed by the owner, that's all. But this is intended ſays he, upon an Office to be found; for in Statutes, all incidents ſhall be ſupplyed by intendment.

Now in the Quo Warranto that was brought againſt the Corporation of Maidenhead in Palmer's Reports, there is this very caſe. That Corporation took an outragious Toll, too much Toll, or that that was not juſtifiable, for going over their Bridge. Yet it was ſo far from being imagined that this ſhould be a forfeiture, (and yet the Caſe is the ſame, let any man diſtinguiſh it that can) that it was a Queſtion whether the Market was forfeited or no, as you may ſee in that Book, fol. 82. And there 'tis ſaid by Dodderidge, and at laſt it was agreed by all the Court, that it ſhould be a forfeiture only of the Toll, and not of the Market. And I deſire that that Folio may be noted by your Lordſhip, and that you will pleaſe to look into what is ſaid in that Caſe, for 'tis debated before, and it ſeemed as if they would have forfeited the Market by it, but not the Corporation, and yet that was not forfeited neither. And to this I will apply that rule that Mr. Solicitor himſelf did mention, Puniatur in eo quo peccat. You have offended in the Toll, therefore you ſhall ſuffer in the Toll, not in the Market, to be ſure not in the Corporation. For if it were that it ſhould affect the Market, it would be becauſe it hath ſome relation to a Market, as a Toll hath; but how can this poſſibly affect or touch the Corporation? The Statute indeed goes thus far, and ſays, Whoſoever ſhall take Outragious Toll

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shall forfeit the Market; but then shall we come and add, Whoever shall take outragious Toll, shall forfeit his capacity of holding a Market, or any thing else? Do they complain of us for taking the Legislative power upon us, and therefore we shall forfeit our Corporation, when the Statute it self has appointed the punishment, and says only, the Market shall be forfeited, and so make a new Law themselves? Statutes are supposed to be penal enough of themselves, and all penal Statutes are to be taken equitably as to the penalty, and not stretch'd beyond the Letter; And wherever a Statute inflicts a penalty, and says you shall forfeit so much, as my Lord Hobart says, the Common Law shuts up the Negative, that you shall forfeit no more. How then is it possible we should forfeit that, which if it were forfeitable at all, is not within the provision of this Law?

'Tis true as Mr. Solicitor hath said in the Book of Assizes that he cited in Vet. Nat. Brev' 161. It is said you shall forfeit in the case of a mis-user, (where the Liberties are not depending one upon another) only the Liberty that is abused, but how that can be applyed for him I understand not; for nothing can be more flat and plain against him: If so be we should forfeit our Toll or our Market, be it so; nay, if we should forfeit our Liberty of having a Common Council; what then? how is it possible to bring it up to a Forfeiture of the Corporation? You shall forfeit a Court of Pypowders, if you forfeit your Market, because 'tis incident to it, and dependent upon it, and subject to what dangers the Market it self is subject to; but the being of a Corporation, nothing can transcend that. To be sure what is incident to it, cannot transcend it; 'tis but a Subject to that which is is superiour.

For example sake, my Lord, I will cite you a Case, which is the Case of the City of London too about the measurage of Coals. It is Sir Julius Cæsar's Case, 1 Leon' 106. And I choose to cite that Book; for though it did not come out with your Lordships Authority, yet my late Lord Chancellor gave this just accompt of it, That it was one of the best of our later Reports. Sir Julius Cæsar libelled in the Admiralty against the Officer of the City for measuring Coals upon the Thames. Fleetwood came to the Bar, and prayed a Prohibition, and Edgerton the Solicitor on the other side complained, that the Mayor of London did take a Fine for this measurage, and made an Office of it; and this he conceived was Extortion (which is the thing complained of here in so many words) and being upon the Thames, should be punished in the Admiralty. As to that the Judges replyed, by no means, and Wrey & Gawdey said, if it be Extortion in the Mayor, there is no remedy for it in the Court of Admiralty, but in the Kings Courts, and it shall be redressed here in a Quo Warranto says Gawdy. 'Tis true, a Quo Warranto might well have been brought for redressing that Extortion, but it could not mean

Duke of Norfolk's case 35.

mean thereby that the Corporation ſhould be diſſolved: And that it was ſo underſtood is moſt plain, for accordingly a Quo Warranto is brought. You have it in Cokes Entries fol. 535. and 536. placit' 4. And the City of London appeared and pleaded, and preſcribed to it; and thereupon the Attorney General that then was, my Lord Coke himſelf, was ſatisfied, and confeſſed their Title, and Judgment was given for them; and ſince it hath been held good, and they have enjoyed it in peace; and this I hope is a good Example for Mr. Attorney to follow in this Caſe.

My Lord, I come now to that part which I come leaſt willingly to, I mean that of the Petition; and that which I have to ſay in it, is this my Lord. Firſt I ſay, That this Petition is juſtified in the Pleading, and I hope it is very juſtifiable; if it were but excuſable, 'tis enough. That it is juſtifiable to Petition the King in our neceſſities and extremities is plain from what my Lord Hobart ſays, fol. 220. He ſays it was reſolved by the Court in Renham's Caſe, that it was lawful for any Subject to Petition to the King for a redreſs in an humble and modeſt manner: For as 'tis there ſaid, Acceſs to the Sovereign muſt not be ſhut up in caſe of the Subjects diſtreſſes. Now the Common Council are not leſs priviledged than any other ſure, but rather more in this kind of Addreſſing and Petitioning: I cannot tell what Crime to make of this, there is ſo much alledged againſt us.

I did very well obſerve truly, and would always obſerve and remember in all ſuch Caſes, what my Lord-Keeper here ſaid to your Lordſhip, That Council ſhould not ſo much ſpeak, as if they would abett the Guilt of their Client, rather than advocate for their innocency.

My Lord, If the words themſelves that are alledged are not words that are unlawful to be delivered or ſpoken, then all this that they are dreſſed up with of the intention to cenſure the King, and to bring him into diſlike with his People, all that muſt go for nothing, and are not to weigh in the Caſe. Now the Words are theſe, That there was a Prorogation, and by means of this, there being depending ſo many Impeachments of Lords and others, and Bills in the Parliament in both Houſes, which could not be perfected any where but there; the proſecution of the publick Juſtice, and the making Proviſions neceſſary for the preſervation of his Majeſty and his Proteſtant Subjects, received an interruption. Now, my Lord, I conceive theſe Words are not Words that in themſelves are unlawful: And for that your Lordſhip will be pleaſed to conſider our Plea; I need not repeat it, you have it before you: If they are in ſenſe and ſubſtance the ſame Words that have been ſpoken by the King, and the Lords and Commons in Parliament; he that will not be ſatisfied with that Authority, will not be ſatisfied with any. Then what do we ſay? We ſay that the proſecution of the publick Juſtice received an interruption;

terruption; does not the King say so, and more in his Speech we have set forth, wherein he recommends it to both Houses, that Justice may be done? What is the meaning then but this, if the further prosecution of the Offenders goes not on, Justice is not done? and so we speak but the Kings Words. We say they are not tryed, or they were not tryed, they themselves complain of it to this day; and therefore Justice did receive an interruption. I am confident, without reflection, that Honourable Person my Lord Danby in this point hath said Words much more liable to exception, though truly Words that I believe deserve no rebuke. He has complained that Justice was not done in his Case, because he was not tryed, and that when he desired to be tryed too, but his Liberty taken away, and he forfeited that which was dearer to him than Lands or Honours, his Health, whereby he endangered his Life, and lost all the comforts of Life. If it were lawful for him to say, as certainly it was, That Justice was not done in his Case, why might not the City say so? Either these Lords ought to be condemned, or they ought to be acquitted; 'tis hard to say Justice is done, when they lie so long in Prison, and are not either acquitted or condemned.

Then we say this, That the making Provision for the preservation of the Kings Person, and of his Protestant Subjects received an interruption. To this part we give this Answer: We set forth, That there were Bills depending in the Parliament for this purpose, and that is agreed to us by the Demurrer; and that these Bills could not pass into Laws, any more than the Lords could be tryed but in Parliament. Why then if so be it be so, that the matter cannot be done, nor provision made, but (as that Proclamation that issued for the Fast said, and as the Addresses of both Houses for the Fast do say) By the blessing of God upon the Counsels of King and Parliament; if these Counsels, or the King and his Parliament are interrupted, this is not done. To make such an high Crime of this I do not understand; I would not be thought to speak any thing to justifie that which is really a Crime; but this is that I say, 'Tis not in Law unlawful for us to petition the King, or address to him: But, my Lord, to take off the edge of this business, I shall beg leave to read to your Lordship a Speech of the Kings, made the 6th of March following, and therein there are these Words, The further Prosecution of the Plot.

My Lord, let any man read, and spell, and see how in substance the Words in our Petition differ from the Words of the King, making those Laws necessary for the security of himself and the Kingdom, and this spoken the 6th of March, when this very Petition now complained of was presented in January or February before, and there was no Parliament between. No man will say, that there were Laws sufficient for the security of the King and

and Kingdom, when the King himſelf ſpeaks of the neceſſity of making ſuch ones: So then, thoſe Laws that were preparing received an interruption. The Lords were not tryed, is not that an interruption of Juſtice? ſince they could be tryed no where elſe, as muſt be granted; and the King recommends it to them as not done, but neceſſary to be done. So the King ſaid before, and ſo 'tis implyed here. There is no ſuch thing ſaid in the Petition, That the King did interrupt Juſtice, and the proceedings of the Parliament; 'Tis an Inference and a Conſequence made by Wit and Art, not that the King did interrupt, or intend to interrupt Juſtice; but it ſays, by the Prorogation of the Parliament, the publick Juſtice received an Interruption.

My Lord, Suppoſe at that time there had been a Peſtilence here, and the King had been as much reſolved to meet his two Houſes as they him, but by reaſon of the Peſtilence he were neceſſitated and forced to make a Prorogation. Then there comes ſuch a Petition from the City and ſays, That by reaſon of this Prorogation, thoſe Bills that were depending did not paſs, and the publick Juſtice received an Interruption: What is the Offence of this? 'Tis all true. If there be Bills depending, and Impeachments that can no other where be tryed, they do receive interruption by a Prorogation. Can any man ſay this is falſe? The charge in the Replication is, That we did falſly and maliciouſly ſay, what? that which is true, and that which the King had ſaid before, and that which the Lords and Commons ſaid after him, That till thoſe things were done they were not ſafe; and thoſe things as yet were not done.

My Lord, There is this further in it, the Petition is ſet forth in hæc verba, and therefore I may take any thing out of it to explain it, and reſtore it to it ſelf; for this indeed is a very reſtrained conſtruction of the Petition.

It ſays, when this interruption by the Prorogation was receiv'd, That the King for urgent cauſes, and very good reaſons, did Prorogue the Parliament. It is his Prerogative to do ſo, and God forbid but he ſhould have it. I think without doubt, we ſhould be more at a loſs for want of that Prerogative than we can by the uſe of it; 'tis mine, and I believe every good mans Opinion, that that Prerogative is very neceſſary and profitable for us all; but it is the conſequence of it that this interruption of Juſtice is received; nay, we are ſo far from ſaying that the King did interrupt Juſtice, or intending it, that we ſay, we do hope the Kings gracious intentions were only to make way for the better concurrence of his Majeſty and his Parliament. The King does, for great cauſes, and beſt known to himſelf who has the Prerogative, Prorogue the Parliament; whereby as a meer conſequence, not as the Kings intention, the publick Juſtice is interrupted: Nay, this we affirm was with a good intention in the King, that he might

the better be inabled to concur with his Parliament, as is set forth in the Petition. Can there be any thing more properly said? 'Tis the greatest justification of the Prorogation that can be. The King has prorogued the Parliament: What to do? Why Justice hath in view received an Interruption, but not in the intention of the King. We know what the meaning of it is, and so we set forth in our very Petition, it is to gain time, that he may the better concur with his Parliament. 'Tis a great commendation of the Kings purpose, instead of charging him with Injustice, that he did resolve to concur with his Parliament for such ends, and accordingly did Prorogue the Parliament.

Now the Attorney General hath put in that it was ea Intentione; there is the sting of the business to put in those words, to make that which we may lawfully speak, of it self to be an Offence; but truly that signifies just nothing: It can never hurt a thing that is true; it has great Authority in it if it be applyed to a thing that is unlawful; but if in substance it be true, and the thing it self justifiable, those Words make nothing in the Case; and I think I need not argue that point, but refer my self to the great Case that was in Westminster-Hall, and that is the Reversal of the Judgment given in this Court against my Lord Hollis, which was a Reversal in Parliament, and is Printed, and the last Impression of Mr. Justice Coke's Reports by order of Parliament, and there they explode all the notion of ea intentione, and this business. A man speaks words that he might speak in Parliament (though I know not whether he might or no) but the great thing is, If words that in themselves are tollerable, to be spoken, be spoken, you shall not come and say they were spoken with an ill intention; though, as I shall shew by and by, this hath a kind of Fatality in it, and that is this, That it is done with an ill mind by a Corporation that hath no mind at all.

Mr. Attorney General. Just now you said it had a mind, and Reason was its mind.

Mr. Recorder. I said as my Lord Hobart says, that a By-law to it is a mind, as reason is to a man, but it hath no moral mind. My Lord, then I say, the Citizens of London were indeed at that time under great consternation, by reason of the Conspiracies that had been discovered in Parliament, and in the Courts of Justice; and it had been declared by the late Lord Chancellor at the Tryal of the Lord Stafford, which your Lordship may very well remember, That London was burnt by the Papists, and therefore 'twas no wonder that they were desirous that themselves and the Kingdom should be put into great security against those Enemies. This, my Lord, I confess is a tender point, and I would not speak a word in't without a Law-book to back me. I remember that my Lord Hobart says, That Zeal and Indignation are fervent Passions. The City of London had great Indignation against the Papists for this Conspiracy against the King and

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Kingdom, and the Religion eſtabliſhed by Law. There was no diſaffection in the City at this time when this Petition was made ſure, and I wonder that any man ſhould ſay, that knows London, and was acquainted with it then, and looks upon this Petition which paſſed nemine contradicente, that they had ſuch an intention as is inſinuated; And pray let him read the Names of the worthy Aldermen that then ſat upon the Bench, and the other Names of the Common Council-men then preſent, and then let him ſay, if, without Reflection, the King have more loyal Subjects in the City of London than theſe men were. And do you think if there had been in it any Sedition, or any of thoſe ill qualities that make up the ill Adverbs which are joyned to it in the Replication, not one of all thoſe loyally-diſpos'd men would have ſpoken againſt it? But alas, all of it paſſed nemine contradicente.

My Lord, I ſay that if the matter of it be juſtifiable, as I think it is, then all theſe words will ſignifie nothing, if there were never ſo many more of them: And the preſenting and carrying of it to the King, that is no Offence, that is not ſo much as pretended to be one. And, my Lord, I think it a very harſh Tranſlation of the word into Latin, when the Petition ſays, That the Parliaments Proceedings, or the publick Juſtice received an interruption, to put that word of Obſtructionem in; truly I think a better word might have been found to expreſs the ſoft expreſſion in the Petition; and they need not have put that hard violent word Obſtructionem, when to make Engliſh of it they tranſlated it Interruption.

But, my Lord, they do admit I ſay, That the making and preſenting of it to the King is not the Offence ſo much as the publiſhing of it, by which it is expoſed to many others beſides. Now to excuſe that, the Anſwer we give is this; and 'tis that which will carry a very reaſonable ground of Juſtification in it. Certain Citizens that were private Men had petitioned the Common Council, and thereby they were importuned to make known the deſires of the City to the King, and it was reaſonable to make known to thoſe Citizens what the Common Council had done to prevent falſe Rumours, which we knew were rife enough in thoſe days; and to ſhew that there was nothing ill in it, we did Print it. And 'tis alſo all driving at the Common Intereſt, at the Kings Safety, the Preſervation of the Church and the Government eſtabliſhed: All this they did deſire might be known to theſe Citizens, and all others that enquired about it; and therefore they Printed it, to evidence that there was nothing of ill intended in it. And I do wonder I muſt confeſs, that this Objection of the publiſhing of this Petition ſhould be ſo much inſiſted upon; for they ſay, That the Mayor, Commonalty and Citizens of the City of London did it, and ſay not any thing of the Common Council that they did print it: Now they that did vote it, knew it without printing; and 'tis alledged in the Pleadings,

and confessed by the Demurrer, That the Mayor, Commonalty and Citizens of London, that is, the Corporation, consists of above 50000 Men, which cannot well be intended otherwise. Why then, here is a Petition that is agreed to be well enough lodged as to the Persons that voted it, it being the liberty of the Subject to petition; and if this had been only presented to the King, though it had been by those 50000 men, nay, if it had been by 10000 men, who had been the Corporation, It had been well enough, so it had not been printed, but only kept private to themselves: Why then 'tis very strange, that what is known to all London, so great a part of the Kingdom, should be lawful, but it should be heinously unlawful to send the news of it further. It went further than the City of London, and therefore 'tis such an Offence as shall be a Forfeiture of the Corporation. My Lord, there is the Case of Lake and King, the Petition to the Parliament was scandalous in it self, yet it stood protected, being presented to the Parliament; and it was lawful to print it, provided it were delivered to a Committee of Parliament, or only to those that were Members; though 'tis said there, that the printing of it is a great publishing, for the Composers, Correctors, and other Persons that are concerned in the Press read every Letter of it. But it was answered, That Printing is but a more expeditious way of Writing; and if he had employed 20 Clerks, it had been a greater publishing than three or four Printers. Possibly the Printers might not read it, or not be able to read it well, or not all of them read it at that time.

Now here my Lord, Sure it was lawful to acquaint the Citizens what they had done, if you take it to be the Act of the Common Council, and the Common Council to be the Representative of the City. It was always agreed by the House of Commons, that any Member might send the Votes to those that sent them thither, and whom they represented; they have blamed indeed men for sending the debates, but never for communicating the Votes: And what they may do by Writing, that they may do by Printing. Why then might not the Citizens of London, who by Custom chose those Common Council men, well desire to know, and might well know what they had done; and then what they might do by Writing they might by Printing; for that is but another way, though a more suitable and compendious way of exhibiting any thing that you would have go to many. And if it be lawful to impart it to all the City, and all the City does know it, though it does go further 'tis no matter; for what is known to London, may very well be known to all the Nation besides without Offence, if it did go further. Besides, it shall never be intended it was published further, or that any others knew of it; for 'tis said to be published in the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, and that is in London, to the Citizens of London; and so they only talked of it amongst themselves. Besides, the

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main thing I go upon, which is, if there be no ill in the thing it ſelf, the ea intentione can make no crime by a bare affirmation, which we deny; and if it might be well ſaid or done, it is lawful to Print it, and the Publication is no Offence neither.

My Lord, The next point I come to is this, That a Corporation cannot poſſibly commit a Capital Crime, or any other Crime againſt the Peace: And I ſhall offer this Dilemma, Either it was done ſeditiouſly or not; if not, then there is no ſufficient Aſſignment of a cauſe of forfeiture; if it were, then 'tis a crime, for which the Offender is indictable; and that I ſay is abſolutely impoſſible for a Corporation to be guilty of. And here I will throw in alſo that buſineſs of the Toll, and I will for argument ſake, admit the taking of a wrongful Toll to be Robbery, and then let the argument go on. I have heard it ſaid within the Bar occaſionally, that a Corporation is intruſted with the Government, and that they may commit Treaſon, and raiſe Sedition, as Mr. Solicitor hath ſaid; I ſuppoſe it muſt be under their Great Seal: But I confeſs, I believe it is rather ſpoken to amuſe than to ſatisfie; but I really think it is no ill, nor unjuſtifiable thing for me to ſay, nor againſt the Government to affirm, That 'tis impoſſible a Corporation can commit Treaſon, or that it is intruſted with the Government in any ſuch kind.

But firſt my Lord, I ſhall ſhew you what Opinion former times had, and that becauſe ſuch an Opinion as this hath been broached of late days.

Lord Chief Juſtice. Mr Recorder, Will you be much longer? Becauſe I muſt ſit here at *Niſi prius* this Afternoon, and yet I would feign hear the Argument, if it would not be too long.

Mr. *Recorder.* No my Lord, I have almoſt done, and will cut ſhort.

In 21 E. 4. fol. 13. b. 'tis ſaid by Pigott, That a Mayor has two abilities, the one to his own uſe, to take and to grant, and to do as another natural perſon does; and then the Mayor as Mayor and Commonalty, hath another Capacity to their common uſe and profit; and that is but a name, an Ens rationis, a thing that cannot be ſeen, and is no ſubſtance; and for this name or Corporation 'tis impoſſible they can do or ſuffer any wrong, as to beat or be beaten, as ſuch a Body; but the wrong is made to every member of the Body, as to his own proper perſon, and not as to the name of Corporation; nor can the Corporation do a perſonal wrong to another; nor can they commit Treaſon nor Felony as to the Corporation, nor againſt any other perſon. And if a Writ of Debt be brought againſt the Mayor and Commonalty, or other ſuch Body, upon an Obligation, and they plead it is not their Deed, and it is found their Deed, they ſhall not be impriſoned as another ſingle perſon ſhall. The ſame Law is if they are found Diſſeiſors with force, they ſhall not be impriſoned; nor

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in a Writ of Ravishment of Ward they shall neither be imprisoned nor abjure the Realm; for such a Body is but a name, to which such an act cannot be done. So says Catesby in the same Book. In a Writ brought against them no Capias shall issue, because they are but as a dead person in Law, and the Appearance upon a Capias cannot be otherwise than personal. And so to this purpose says the Chief Justice there, If this Body will do any thing, it must be done by Writing. And all along it is the Tenor of the whole Case, that a Corporation cannot commit Treason, or any other Crime. But the reason of the thing is above any Authority. Suppose that they under their Common Seal should commit Treason, and you bring an Indictment of Treason against the Mayor, Commonalty and Citizens of the City of London, what Judgment shall be given against them in their corporate capacity? What? it shall be that Suspendatur per collum Corpus politicum. And then, what execution shall be done upon that Sentence? What must they hang up the Common Seal? Nothing else you can do can affect them; but in their private capacity, there they may be punished as single persons.

A Penal Statute says, That he or she that offends against the Law shall forfeit so much, or incur such a Penalty: Is a Corporation Male or Female? that it should come under such a provision; but the real reason of the Law is this, it is a civil Being, it is Ens civile, it is Corpus politicum, it hath civil qualities, but it hath no moral qualities, and all Offences consist in the immorality of them, and there must be malice to make that immorality. No words or Acts are Treason or Felony, unless there be a traiterous mind or a felonious mind, and therefore a mad-man cannot be guilty of Treason or Felony. Serjeant brought an Action for these words, That he had spoken Treason; it was moved in Arrest of Judgment, that this cannot be Actionable; for he might speak Treason in putting a Case; ay, that were well, said they, if it could be understood so; but we must intend it that he spoke Treason, as his own words ex corde suo, which makes it Treason; for Treason consists in the immorality of the mind.

Another reason is what Pigot said, as I said before, That a Corporation is but a Name, an Ens rationis, a thing that cannot see or be seen, and indeed is no substance, nor can do or suffer wrong, nor any thing where a corporal appearance is requisite. What my Lord Dyer says in Moor 68. that he never saw, is, I believe, true in general, that no Man ever did see, that a Corporation could be bound in a Recognizance or Statute Merchant; and why? because it must be acknowledged in person: And so in this case, The Guilt follows the Person, but cannot a mere capacity. In all Crimes the Offender must appear in person, and plead in person, and suffer in person; but you can never bring the Mayor, Commonalty and Citizens into Goal, to appear and plead

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to an Indictment to receive a Judgment, or ſuffer Execution. Can a Body Politique that is inviſible appear in perſon?

Obj. But then there is this great Objection, By this means, they ſay, if there be no puniſhing of them, there is no Government, and they may commit Treaſon under the great Seal, they may raiſe Armies, and inſtigate a Rebellion, and all with impunity.

Sol. My Lord I ſay no, and I give two Anſwers to it that are not to be replyed to; and the firſt is this:

1. All theſe Perſons that are met together, though they are met corporaliter, in their corporate capacity, for the Acts of the Corporation at that time; yet when they go out of their corporate buſineſs and commit Treaſon or Felony, the Crime does not egredi perſonas, every one of them is a Traitor or a Felon; and notwithſtanding they appeared there under the pretence of a Corporation, yet they are all liable in their private ſeveral Capacities, every one of them muſt be indicted perſonally, and ſuffer perſonally: For when they go about to do ſuch a thing, 'tis out of the buſineſs of the Corporation, and they muſt anſwer for their own particular Offences. But,

2. I have another Anſwer to give to it. This Objection is to be retorted on the other ſide. That if a Corporation authorize the levying of War under their Common Seal, ſhall be affected by it in their politick Capacity, they are lyable to the Law in that Capacity only, and muſt ſuffer in that Capacity only: And the conſequence of that is, they are diſcharged in their private Capacity; and this is a Law of Indempnity and Protection for all Crimes, for a man cannot be lyable two ways for Treaſon or Felony, or any other Crimes; if he be not lyable in his private, he is in his publick Capacity; if not in his publick, he is in his private. And what is the conſequence of that? This is a Diſpenſation for a Corporation met together in a Body, to do any illegal thing, or to commit any enormous Crime; for the Kings Counſel ſays this, We are reſponſible for it in our politick Capacity; and what Execution can then be done to puniſh that Corporation with ſuch a puniſhment as the Law inflicts, that is, Impriſonment or death, any more than upon an Action of Debt brought againſt them upon a Bond, and Non eſt factum pleaded, and found for the Plaintiff, they can be impriſoned, and the like. So that this ſhall protect and ſhelter them in the commiſſion of any Capital Offence; for if they are to ſuffer for it as a Corporation, you muſt take Judgment againſt them as the Law gives it; and how will that be done againſt an inviſible Body? What will be the Execution againſt the Corpus Politicum, that can neither ſee nor be ſeen?

I think this mighty plain; and I muſt confeſs, I wonder how it could ever enter into the mind of any man, that a Corporation could commit a Corporate Crime. I have as it became me, in regard

regard of the duty of my place, and before that, for my own Learning, read Stamford's Pleas of the Crown, my Lord Cokes 4th Institutes, Poulton de Pace Regni, my Lord Hales's Pleas of the Crown, Dalton's Justice of the Peace, and other Books of that Subject, but I defie any man to shew me in any of those Treatises concerning Criminal Matters, any resolution, that ever a Corporation that could be concerned, that they should be brought before a Justice of Peace, or proceeded against upon any Law for Treason or Felony, or be hanged in their politick Capacity.

My Lord, I shall conclude all my discourse of this kind, (and I have almost done, because I perceive I encroach upon your patience, with an observation I have made upon the 19 H. 7. c. And and 'tis the Statute that makes provision against Corporations, that made By-laws against the Prerogative. That Statute says, that some Corporations did so; now an higher Offence than that, sure cannot well be described; and there that Law says, that those that do so, that make such By-laws against the Prerogative, shall forfeit for so doing for every Offence Forty pound, unless they are confirmed by the Chancellor and Treasurer, and Chief Justices, or any three of them. Now to what purpose was this Statute made; if the making of an ill By-law (and worse cannot be than a By-law against the Kings Prerogative) should be a forfeiture of the being of a Corporation? How vainly did the King and Parliament employ themselves to make a Statute that a Corporation should forfeit 40l. for such an Offence? No Man will say they had rather take that Penalty than another, when they might have a greater, if a greater could be had by Law. If they might have had a Quo Warranto, and thereby destroyed the Corporation, surely they would not have stood for the Penalty of 40 l. for they might easily have got more mony: No, they might have said, We will never pass it by, unless you will give us 4000l. or a far greater Sum; nor shall you have your Corporation again, without you give us a considerable recompense for it: And when the process and the proceedings were so expeditious and easie to come at it in a Quo Warranto, as it was easie in those days, why should they put the King to the delays in an Action of Debt for so small a Penalty as 40l.? So that I take it to be a direct Judgment of the Parliament in that Case, that no Corporation should or could be forfeited for the making of any By-Law that was irregular, though it were even against the Kings Prerogative.

But to hasten to a conclusion, I have all this while, my Lord, supposed, that the Mayor, Commonalty and Citizens of London have done this, but it is not so; this is not the Act of the Mayor, Commonalty and Citizens, 'tis not the two hundreth part of the Corporation, 'tis but the Act of the Common Council; and we have distinguished our selves by pleading, that it does not consist

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of above 250, when the City contains above 50000. I muſt confeſs the Council is not taken notice of much in Law; as is ſeen in Warren's Caſe, 2 Crook 540. & 2 Rolls 112. Warren being one of the Common Council of Coventry, and diſplaced, ſued out a Writ of Reſtitution, and upon that Writ it was returned, that by cuſtom the City might place and diſplace ad libitum; they there held that the cuſtom was good: But it is not ſo of a Freeman or Alderman, becauſe he hath a Freehold; but a Common Council is a thing collateral to a Corporation, and the Office of a Common Council is nothing but only to give aſſiſtance and advice, which they may refuſe at their pleaſure. In Eſtwick's Caſe in Style 32. & 2 Rolls 456. it is ſaid, That 'tis a place meerly by cuſtom, and that the Common Council is properly but only a Court of Advice; and, my Lord, you ſhall never intend more than that they were a Court of advice: All the riſe of their Power is but by cuſtom, and that cuſtom is pleaded to give advice for the benefit of the City, and make By-laws for the good of the Corporation, and that is confeſſed by the Demurrer, and you ſhall intend no more than what is opened in the pleading.

And then 'tis evident this was done by a very ſmall part of the Citizens of London, and that does no way affect the whole Corporation ſure. In James Baggs Caſe, 1 Rolls, fol 226. it is ſaid, That if a Patent be procured by ſome perſons of a Corporation, and the greater part do not aſſent to it, that ſhall not bind a Corporation. And if ſo be a Charter ſealed, and ſent by the King, becauſe not accepted in pais, by the greater party, bind not, Shall an Act done by a few, and an Act done that tends to a Forfeiture, bind the whole in point of their being? There is no ground to ſay, that the Common Council repreſents the City, no more than a Counſil does his Client, or an Attorney his Maſter; only as far as is for the benefit of the City, they are choſen and entruſted to make By-laws; if they offend, they are but Miniſters and Officers, and ſo they are within the Statute of Ed. 3. which I mention, though I think we have no need of that in the caſe to help us; if they make an unreaſonable By-law, 'tis void, and every man that is aggrieved by it may have his Remedy, may bring his Action. Shall you ſupply this by an intendment, that they have ſuch a relation? That they are the Repreſentatives of the City of London? That they have a power to forfeit the Corporation? No, my Lord, by Law they are part of the Corporation, but they have no ſuch power to forfeit the Corporation. A cuſtom ſhall never be conſtrued to enable a man to do a wrong; and a great wrong it is, that they that are truſted, and truſted but for a year, and truſted but for the good of the Corporation, of which they are part, ſhould give up the being, or what is worſe, forfeit the being of that Corporation. The cuſtom of Kent that makes an Infant capable of making a Feoffment, ſhall never inable an Infant Tenant in Tayl, to make a Feoffment, ſo as to work a diſcontinu-

ance of the Estate Tayl, and put the Heir to his Formedon. Every illegal Act of theirs is beyond their Commission, and a nullity of that is all in respect of themselves; and 'tis as if they the had never done it as to the Corporation, for they are by no means the Corporation; for tho they use the Comm Seal in some cases at some times; so do the Court of Aldermen in other cases; but it is only in other cases wherein they are particularly intrusted. If an Act of Common Council say, that I shall have such and such Lands of the Cities, that Act signifies nothing but as a direction and advise; when 'tis under the Common Seal, 'tis an Act of Corporation, and proceeding by advice of Common Council, it binds.

Now, my Lord, this is the more unreasonable, because we know that the practice of the Common Council in London, being to advise for all the Inhabitants, they are chosen by the unfreemen as well as others; and 'tis a strange thing that they should have a capacity to give away the liberty of the Citizens, when they are chosen by others as well as them; they had no such trust for them; nay, all trust they had was to keep their Liberties, and not to destroy them. Has any Man a trust to destroy himself? sure no Man is trusted by God himself to be felo de se. And certainly then you can never understand it to be in the nature of a Trust to destroy another; and the least Citizen, my Lord, has as much and as true an interest in the Corporation of the City of London, as the greatest: And therefore 250, if they had been much the greater number of the Citizens, would signifie nothing to the rest of the Body.

My Lord, I shall only say this little more, here is no crime charged relating to them as a Corporation: Here is indeed a fine word used, that we did this contra fiduciam in corpore politico repositam, but all this is but an imaginary Trust, the King never gave them a power or authority, or entrusted them to make By-laws that were unreasonable; he gave them a power to make reasonable By-laws, and so he does every Corporation. And the same Law that gave them the power, limits that power, and says, if they go beyond that power, 'tis a nullity. And these Acts relate not to them as a Corporation; the Petition is not so much as said to be against any trust reposed in the Corporation, certainly there never was any such Trust. Did ever the King entrust them to advise him about the matters contained in the Petition? and if not, then 'tis not contra fiduciam; therefore it relates to particular persons: If it be an Offence, I hope 'tis none of the Corporations.

But then the levying of Mony, that is contra fiduciam; they took upon them an illegal and unjust power in the Common Council

Council. Suppoſe it ſo, how does this belong to the Corporation? 'tis an encroachment upon property, 'tis the moſt arbitrary thing in the world. Whether they have the Market, and the Dominion of it or not, is matter of Fact, and being pleaded, is confeſſed by the Demurrer: And then for the power of making By-laws, that is a thing that cannot poſſibly be taken from them while they are a Corporation; 'tis that which muſt be in them as a Corporation, like the faculty of Reaſon in a Man to expreſs his Reſolutions by. And 'tis no more, than if a man that has a Market, bid his Servant go and remove ſuch as have Stalls there, unleſs they will pay ſo much. That direction is as good a Law as this, and as bad a Law as this, and no more. There is nothing elſe in it but the direction of the Officers, what they ſhall do in the ordering of the Markets, and diſpoſing of the Cities Property.

Then as to the former method of expreſſing themſelves, whether it be by Act of Common Council, or under the Common Seal, or by their natural Voice, 'tis all one, 'tis not a thing that concerns them as a Body Politique: But if it were illegal and miſtaken, I ſay, the Penalty is only, that it ſhall be void. What the Common Council, nay what the Corporation does within the limits of its Authority is good, what beyond that it does, is void. If I command my Servant to diſtrain for Rent, and he kills a Man in the doing of it, this, as to me, is void; but as to himſelf, that is chargeable upon him. And what I ſay of the Common Council, I ſay of the Corporation it ſelf, That it is a Capacity, and a limited Capacity; 'tis the act of the Members, not of the Corporation, if they do wrong. The Common Council can act for the good of the City, and the City can do no more, if they themſelves ſhould mart, Crooke, Eliz. fol. 85. The Queen makes a Leaſe for years of Lands to the men of Cheſterfield, by the name of Aldermen, and they by that name grant all their Intereſt to Clerk; ſays that Book, this is void; for the Queen granting them a Leaſe as to the Aldermen of Cheſterfield, this makes them a Corporation, and gives them a capacity to take, but not to grant. And ſo Rolls Abr. 1 p. 513. And therefore no Corporation is to be conſidered as a Corporation, but only when it acts according to the capacity allowed to it; and as to the reſt, it all turns into their private capacity, but it affects not the Body, nor hath any ſuch relation as to bind it.

My Lord, All the Queſtion here is, Whether there ſhall be ſuch a Perſon in Eſſe as this Corporation? Whether the City of London ſhall ſubſiſt as ſuch a Perſon, to ſue and be ſued, to plead and be impleaded? There is nothing of Government or Miſgovernment in the caſe, but 'tis all about our Capacity,

and nothing else, whether we shall be Defendant or Plantiff in any Court.

My Lord, Magna Charta and all the other Acts that have gone in confirmation of it, shew the great care of the Government in all Ages to preserve the City of London, and I look upon them as so many Declarations of the immortality of it, and all other Corporations. I shall use a strange Argument perhaps at first hearing, but 'tis to me a great Evidence for us, that Magna Charta does not confirm our being, but our Liberties and Priviledges; it says, That the City of London shall have all its Liberties, it confirms its Leets, its Markets, and all those things, that is, it confirms all that it has; it has not saved indeed, if a Corporation indeed be built upon a Corporation; but that particular Liberty may be destroyed, as that of Bridewel, and the like, but it does more than confirm its being, for it does implicitly declare, That that was impossible to be forfeited: They confirm what needed confirmation; but for their being there was no need of that, it only confirmed the supervenient Liberties, without which it might be a Corporation; but as to its being, it medled not with that: And if it were not so, it were an unreasonable thing that we should have so many Acts of Parliament that give such particular Powers to the Mayor and Commonalty of London; and scarce any Act of Parliament that relates to the Publick, but London is mentioned, and taken care of in it. Are not all these Declarations that London should stand for ever? Would not any one have said else, Pray what do you put such confidence in London for? There is not such a fickle thing upon the Earth as the being of the Corporation of London. If they lay but 6 d. upon a Joynt of Meat they are gone, and there is not a month in the year but they forfeit their being.

The Act for Administration hath a Proviso, that says it shall not extend to London: Why does any Man think that this Law was not intended to be as perpetual for London, as for other parts of the Kingdom? They did not question but London would be a Corporation as long as England was England.

It would be a strange thing in the Example of it, that the World should be taught by one instance, that a Corporation can be ruined, when so many People put their Trusts in those Corporations, and so many vast Inheritances depend upon them. And I think the King and the Government, or those you call so, are more concerned to preserve London, than all the Persons that are in it. I would not speak it in this place by way of Argument for my Client, but I think I could maintain it in all places; only I hope and believe I shall have no need for it.

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My Lord, All Innovations (as this muſt certainly be a very great one) are dangerous; this Frame of Government has laſted and been preſerved for many Hundreds of years, and I hope will do as long as the World endures.

My Lord, I am ſenſible I need your patience, but I have juſt done it. Here is a Charge that is very little, indeed there is nothing in the Matter of it; but the weight and conſequences are fitter to be meditated upon, than ſpoken of. And therefore for theſe Reaſons I do pray that theſe Liberties may be adjudged to us, and we may be diſmiſſed out of this Court.

Now, my Lord, if your Lordſhip pleaſe, I will give an Anſwer to Mr. Solicitor's Authorities.

Lord Chief Juſtice. I ſuppoſe you do intend to Argue it again, and therefore there will not be ſo much need of that now; beſides, It is late, and I cannot ſtay.

Mr. Attorney General. My Lord, I think it may be very proper to have one other Argument, for it is the firſt Week in *Eaſter* Term.

Lord Chief Juſtice. Take what day you will, Mr. Attorney.

Mr. Attorney General. Let it be the firſt Friday in the Term, if you pleaſe my Lord.

Lord Chief Juſtice. Let it be ſo.

Look you Mr. Recorder, I perceive you do agree that the Petition ſetting forth that the King having Prorogued the Parliament, and thereby that Common Juſtice had received interruption; that you have juſtified in your Plea (I took it always to be ſo) and now at the Bar, That the King by the Prorogation did interrupt the Juſtice of the Kingdom.

Mr. Recorder. No, no, my Lord, then I have reaſon to ſpeak again to make my ſelf rightly underſtood.

Lord Chief Juſtice. Why, look you, you do agree that the King had Prorogued the Parliament, and thereby that publick Juſtice was interrupted; if that were ſo, by whoſe means and by whom did the publick Juſtice receive interruption, if not by the King? I did take it to be ſo really, and that you had juſtified it.

Mr. Recorder. My Lord, I do agree as we ſay, and as the King himſelf ſaid, that theſe Acts were not paſſed, nor the Lords tried, and ſo Juſtice was not done; and I would ask your Lordſhip, or any other indifferent perſon, Whether Juſtice were done, or neceſſary proviſion for theſe things made, if thoſe Bills were unpaſſed? If it were ſo, 'tis a natural Truth, that thereby the Trial and Acquittal, or Condemnation of the Lords was interrupted, and ſo was the Security of the Kings perſon, and the Proteſtant Religion, the Bills not being paſſed. For the King calls upon the Parliament to paſs them the next Seſſion, therefore they were not paſſed in the former Seſſion. This is by no means a charging of the interruption of Juſtice upon the King; every great thing that is done by the King may have a prejudicial influence it may be as to ſome particulars, but to ſay that thereby Juſtice is interrupted, is not to

charge any blame upon the King, because though it may be prejudicial in one particular, yet it may be useful to the Publick. No doubt, if the King do Prorogue the Parliament for never so great Ends, and necessary Causes, yet if I have but one Bill passing there, suppose it be a private Bill about Naturalization, or the like, if a Prorogation comes, it is naturally true that that is interrupted, but that is not laying a blame upon the King.

Lord Chief Justice. May it be said that the publick Justice is interrupted, if a Bill for Naturalization (or the like) pass not before the Prorogation? I speak it for this only, that they that Argue next may think upon it. The Petition does say, that the publick Justice was interrupted, did they mean it was true? or did they mean it was not true? If they did mean it was true, then you have done well to justifie it, to say it was so, and the King had done amiss in Proroguing the Parliament. Yet it seems the Common Council of London (neither by Charter, nor by Prescription) had any Right to controul the King, nor to be of the Kings Council neither, and therefore it was a matter purely dehors. If the matter were not true, why do you put in your Petition? If it be true, justifie it if you can. But here's the matter, I would have a good Answer given me to this Point. The Petition was to the King, if so be the Petition had been delivered to the King (as it may be it was) it was but one single Petition to the King, that might be well enough, if there had been no more in the Case, 'tis very possible it might not have been a Question at this time: But pray, I would know of them that Argue next, by what Law or Authority it was, and what was the meaning of it, that that which did not require Two Clerks to write, in order to its being presented to the King, must be printed? By what Law is it to be justified the printing and publishing of this Petition, and sending it all over the Nation, whereby the Mayor, Aldermen and Common Council of the City of London do let all the Nation know, that they do look upon the King as one that (by the Prorogation of the Parliament) had given the publick Justice of the Nation an interruption? Pray by what Custom or Law is this published? In the Case de Libellis famosis (even in the Case of a Subject) it is adjudged, that if you print a Libel, though the matter of it be true, you shall be punished for it: Now when it is argued again, I would desire some good satisfaction in that, what reason or ground there was for printing or publishing this Petition, unless it be to that intent which is set forth by Mr. Attorney General in his Replication.

Now for the other Point, as you have ordered the matter, you hold that a Corporation cannot be forfeited. Mr. Solicitor did take some pains to Argue that there was no Statute that did protect you from a Forfeiture, he was not aware of what you did insist upon: You say that by the Common-Law, Corporations cannot Forfeit their being; if so be they cannot, there's an end of the Question. But I pray do you take it that a Corporation can commit any Corporate Act or no? For according to your definition of the matter, if nothing will serve

ſerve but the Act of the Mayor, Aldermen and all the Citizens, I believe I may ſafely ſay, and ſo will every one elſe, that never any Corporate Act was done by the City of London, ſince it was a City.

We know on the other ſide, and you when it makes for your turn told us, that the Mayor, Aldermen and Common Council could make By-laws and they were good, and binding, that is, when it lay in your way. For you make a Preſcription in your Plea, and ſo alſo you have ſaid at the Barr, that they may make By-Laws to bind the Corporation. So that it ſeems when 'tis for your conveniency, then the Mayor, Aldermen and Common Council can do as much as all the Corporation; but when you come to be touched with ſomething that you have done, in which you have gon beyond what you ſhould have done, then the Citizens are 50000 Men, and theſe are but 250 Perſons, that have done theſe things. Either the Mayor, Aldermen and Common Council are the governing part of the Corporation, or elſe they ſignify juſt nothing: If they be, then whatſoever they agree upon, binds the whole and muſt be taken as a Corporate Act, or otherwiſe you will bring it to this paſs, that the Corporation can do nothing at all. For if the whole Corporation be not bound by ſuch an Act, then 'tis impoſſible for you ever to do an Act, that ſhall be an Act of the Corporation; ſo that, that will be pretty hard for you that are for the City, I think to maintain. Then I have but one word more, (I give no Opinion, but only tell you, what I would have you apply your ſelves to,) Is the Truſt of making By-Laws annexed to the Lord of the Market? or is it annexed to the Lord Mayor? or is it annexed to the Corporation? Surely the power of making By-laws is annexed to the Corporation, and I cannot ſee how, as owners of the Markets, they have that power. Now by your diſtinction, where there is a Franchiſe that does neceſſarily depend upon another, there the abuſe of any part does forfeit the whole Franchiſe. If then this power be annexed to the Corporation, as ſure I think 'tis (but I reſerve my ſelf till I have heard a further Argument about it,) then conſider whether or no when they have abuſed that power (in making this By-Law,) that is knit to them as a Corporation, it does not affect the being of a Corporation. For 'tis ſtrange a Corporation ſhould commit a fault, and not be puniſhed for it. I tell you I deliver no Opinion in any thing now, but theſe things, I would have you give me ſome Satisfaction in, and there are indeed ſeveral other things that will require conſideration, I only hint theſe now.

DE

De Termino Paſchæ, Anno Regni Regis *Car.* 2. 35. Annoque Dom. 1683.

In Banco Regis.

Sir *Robert Sawyer*, Attorney General for the KING.

REX verſus Major', Cives, & Communitat' London', Quo Warranto.

This Caſe between the KING and the CITY, muſt be acknowledged to be a Caſe of impoꝛtance, both as it refers to the general Government of the Kingdom, and that of the City in particular.

As it concerns the particular of the City, It doth not bode ſuch diſmal Conſequences, as ſome Men endeavour to frighten their Neighbours with; as if it were hereby deſigned to demoliſh at once all their Liberties, and to lay waſte and open the City of London, and to reduce it to the condition of a Country Village;

Than which nothing could be moꝛe maliciouſly ſuggeſted of ſo excellent a Pꝛince, who hath given ſuch large Demonſtrations, not only of his general Care of all his Peoples welfare, but of his moꝛe eſpecial and particular Kindneſs to this City of London.

This Quo Warranto is not bꝛought to deſtroy, but to reforꝛm and amend the Government of the City, by pꝛuning of thoſe exceſſes and exoꝛbitances of Power, which ſome men (contrary to their Duty, and the known Laws of the Land) have aſſumed to themſelves under colour of their Coꝛpoꝛate Capacity, to the reviling of their Pꝛince, the oppꝛeſſion of their Fellow-Subjects, and to the infinite diſquiet of their Fellow-Citizens.

I ſhall not recount the Miſchiefs which thoſe Exoꝛbitances have of late wꝛought within the City, both as to its peace and pꝛofit, as likewiſe to the obſtruction of the free courſe of Juſtice, that few Cauſes eſcaped the Crime of Maintenance from a divided Party.

Theſe Exoꝛbitances committed by the City, calling ſo great an influence over the whole Kingdom, make the Kings interpoſition in a courſe of Law neceſſary, bꝛ gently laying his hands upon them foꝛ their Cure.

Herein the Politick Body of his Subjects reſembles the Natural, that the diſaffected Members are beſt Cured by laying on the Kings hands upon the Body.

It hath been obſerved, That the City of London was never better governed, noꝛ flouriſhed moꝛe, than after it came from under the Kings hands.

The Reaſon given by Edw. 1. at his Parliament in 18 Edw. 1. of denial of the Petitions of the Citizens of London, to be reſtoꝛed to their foꝛmer ſtate; ſcil. To have a Maꝛoꝛ and their Ancient Liberties, is this: Roll. Abr. 204.

Quia ſunt in bono Statu, & omnia bene & in Pace, & nullum Commodum apparet to change it then,

The City was in as good plight, both as to its Quiet and good Government and Pꝛofits too, whilſt in the hands of the King, under the Common Law Government, as it would be in the hands of the Coꝛpoꝛation.

Neither did the City ſuffer by being in the Hands of the Crown, as it was in the Reigns of Edw. 1. Edw. 2. Edw. 3. and Rich. 2. Nor their Ancient Cuſtoms and Priviledges deſtroyed, but they were thereby indeed reſtrained and held within the modeſt Rules of Government, in ſubordination to the General Government of the Kingdom.

And therefore the Danger threatned by this Suit will not be ſo fatal to the being, or well-being of the City, as was ſuggeſted.

Nay, I may with great aſſurance ſay, That if the City receive the leaſt harm hereby, Their or their Managers, obſtinate and final Impenitence muſt draw it upon themſelves.

For though the Concluſion of the Replication upon the Aſſignment of the Forfeiture be, That the Liberties be ſeiſed, and they ab iiſdem penitus excludantur,

That is but the formal Concluſion upon Aſſignment of Forfeitures, It ſhews what the Judgment of Law may be, if demanded by the Kings Attorney, and neceſſitated by the Cities obſtinacy, but doth not exclude the King's Grace.

But the Importance of this Caſe, to the general Government of the Kingdom, is of another Nature; and the Conſequences thereof (both to the King, and His Subjects in general) appear now far greater than, before, from the manner and grounds of the Defence made for the City at the Bar: Viz.

From the general Topicks of Corporations, That they are Immortal and Indiſſoluble; That no Treaſons or Seditions againſt their Prince can be committed by the Members of a Corporation.

Nor though thoſe Members meet, and act joyntly in the ſame manner and method, as they do all other Corporate Acts.

No, though they ſhould Vote raiſing of Men againſt their Prince; and ſhould give Authority (under their Common Seal) to levy Money for that purpoſe.

That Murders, Felonies, and Oppreſſions of their Fellow Subjects, either by unjuſt Impriſonments or Levying of Money upon them.

That none of theſe Crimes committed by the majority of the Members of any Corporation, and Authorized under the Common Seal, will affect the Corporation or the Government thereof in point of Forfeiture: But a Corporation once Conſtituted, is out of the reach of the Common Law, to determine its being, or its Governments, for any Cauſes whatſoever.

If ſuch Notions as theſe could be true, or ſhould receive the leaſt Countenance in a Court of Law;

It would be unſafe, either for the King or any of his Subjects, to live in or near a Corporation. And the Complaint made by the Commons in Parliament 21 Ed. 3. That the increaſe of Franchiſes tended to the extinguiſhment and overthrow of the Common Law, would ſoon be made good to the purpoſe, when ſuch great Bodies of Men, as the Corporations within England conſiſt of, ſhall joyntly have a Power allowed them, Quidlibet impune audendi, without being capable of Separation.

Edw. 3. cap. 17.

The diſtinction between the Politick Capacity and the Natural, to ſubject the one to puniſhment and not the other, was framed in the Jeſuits School, to encourage Subjects to rebel againſt their Princes; but never yet ſo far improved the diſtinction to apply it to Corporations, which (if they had thought of it) would have been more efficacious to their purpoſe, than as they applied it; aſſurance of Impunity being the ſtrongeſt Argument for a commiſſion of any Crime.

The Caſe being of ſuch Conſequence both to the King, and his Subjects in general, I ſhall endeavour to examine it by the Rules and Precedents of Law, that I may ſever what is meer Notional, from what is of ſubſtance in it.

I forbear to trouble the Court again with opening the whole Pleadings, but ſhall take the Caſe as it hath been opened.

Wherein the general Queſtion is, Whether by any thing diſcloſed upon the Pleadings, it appear to the Court, That the Mayor, Citizens and Commonalty of *London*, have forfeited their Right of Being and Acting as a Body Politick, and ſubjected that Right to be ſeiſed into the King's Hands?

In ſtating of the Queſtion, I forbear to ſtyle it a Franchiſe or Liberty, that I may not by Anticipating preclude the force of Mr. Recorder's Argument, That it is no Liberty or Franchiſe; but may reſerve the entire Conſideration thereof to its proper place.

And therefore I ſhall call it a Right, for ſuch moſt certainly it is; and it includes both Jus agendi, & Jus habendi. Before we can arrive at the main Queſtion, certain preliminary Points have been moved and debated.

Some to the form of the Suit and Pleadings, others relating to the Matter thereof.

To the Form Mr. Recorder took three Exceptions:

1. That the Information is not well laid, becauſe not brought againſt particular Members by Name, which ought to be in all Caſes, where the Right of Corporations is queſtioned or ſtruck at.

2. That the Replication is worſe, importing a Contradiction both to the ſuppoſal of the Information, and to it ſelf; becauſe it denieth London to be a Corporation, which the Information allowed and admitted it too, to be a Corporation by aſſigning Cauſes of Forfeiture.

3. That no Judgment can be given upon theſe Pleadings, either of Seizure or Ouſter; not of Seizure, becauſe the King cannot ſeize what he cannot hold when ſeized: And the Body Politick, by which Name 'tis ſued, cannot be Ouſted of it ſelf.

The great Triumph Mr. Recorder erected upon the ſtrength of theſe Exceptions, as for an aſſured Victory already obtained, makes it neceſſary for me to give a more particular Anſwer to them than their weight would otherwiſe require.

For the Authorities cited by him argue very little to this purpoſe: And indeed he hath been ſo unfortunate in quoting of Authorities, that how little ſoever they ſeem to make for him as to the Point he produceth them, yet flatly makes againſt him in ſome other material Point.

Not only by his Authorities, but his Objections themſelves, to the Form of the Information, admit, That a Corporation is in its Nature ſeparable by Judgment of Ouſter againſt the particular Members by their Natural Names.

The Opinion of my Lord Hales, in his Common Place Book, Quo Warranto fol. 168. pl. 7. argues, He did not think of the Indiſſolubility of Corporations; but 'tis no Opinion, That the only way to impeach them was by a Suit againſt particular Perſons; for 'tis only a ſhort Reference to the Caſes of Cuſack, and others of Ireland; and Farrer, and others of the Virginia Company. Quo Warranto 168. pl. 7.

Which Caſes (as alſo that of Fiſher, Helden, and others of the Borough of Hebmerley; the Caſe of the Muſicians and the Bermudas Company; and the other Caſes cited by Mr. Recorder) do fully prove, That Corporations are Franchiſes, and may be queſtioned and impeached in the very Point of being Corporations by Suits of Quo Warranto.

And they do prove, That the Suit may be brought againſt ſome particular Members by Name.

And againſt the reſt of the Corporations by the General Words; as, Et alios Liberos homines, & alios Burgenſes, & alios de Fraternitate.

And theſe General Words are material and operative, for a Judgment thereupon binds the whole. Paſch. 17 Jac. Rot. a.

In the Caſe of Cuſack againſt Particular Members by Name, cum diverſis aliis Civibus Civitat' *Dublin'*.

Judg-

Judgment was given to out not only the particular Men, but alios Cives, & Successores suos.

Upon the Writ of Error, it was Assigned upon Record as one of the Causes of Error, that Judgment was given to out the Corporation of those Liberties; yet no Parties by their Names of Incorporation; but Judgment was Affirmed.

Mich. 21. Jac. Rot. 9. And the Quere that is made in Rolls 2 Report, in the Case of Ferrars, and others of the Virginia Company; Whether the Corporation were barred? probably did arise from the non observance of the Records, where Judgment was given, as well against the Alios Plantatores, as the particular Men made parties.

In both these Cases the Suit was as well against the rest of the Corporation as the particular Men: The appearance by Attorny was entred for both, and the Plea as well in the Name of the rest, as the particular Men, and Judgment against both.

And the Judgment against the Virginia Company discharged that Company.

These and the other Precedents produced by Mr. Recorder, do prove that the Kings Suit may be brought against particular Persons by Name, and against the Residue of the Corporation, by a general Name of & alios homines; or against particular Persons, and also against the Corporation, by the very Name of Incorporation, as the Case of Bermudas Company: But they do not argue the King hath not a further Election, either to bring his Suit for questioning the Corporation, by the proper Name of Incorporation without naming of particular Persons, or by some other general Name, which sufficiently describes the Persons.

I shall therefore apply these answers to the objection warranted by precedents of Law.

That wherever many Persons are Joyntly concerned in charge or discharge, and the King hath cause of Suit against them, he may Sue them, either by naming some particular Persons, with a general Reference to others; or he may Sue only by a common name of description without admitting them to be a Corporation, especially where the general Name sufficiently discribes the Persons who took this Corporation.

And this as well for offences at Common Law, as against Statute Laws, Where Murder is committed in the day Time in a Walled Town, tota Villata oneratur; and so for repair of Highways or Nusances in Highways, repairs of Bridges, and for Levying of the Hue and Cry.

The Kings Suit either by Indictment or Information hath been used both waies, either naming some few particular Inhabitants, but then alwaies with a general reference & alios Inhabitantes, which is essential, otherwise both Indictment and Information would be naught; or they are frequently only by the general name of Inhabitants, within a Parish, Hundred or County, as the Case is, without naming any particular Inhabitants at all; to produce Instances of this nature, would be infinite the; Cases frequently falling out both at the Assizes, and in this Court. It is so in Cases of Quo Warranto.

Mich. 27. Eliz. Rot. 15. 23. R. A Quo Warranto against the Inhabitants of Denbigh, for using several Liberties, as to hold a Court of Pleas before the Bayly, and chusing two Aldermen, &c. upon Plea and Demurrer, Judgment of Seizure is given, & quod Inhabitantes Capiantur.

Co. Ent. 537.

Hill. 40. Eliz. R. 38. A Quo Warranto brought by Gerrard the Queens Attorny, against homines & tenentes Manerij de Kings Haurston in Com. Bedford, for claiming to be discharged of Knights Wages, &c. they pleaded the Manner to be antient Demesne, and their Plea confessed, and Judgment for the Tenants, without naming any particular Tenant.

These

Theſe general Names of Inhabitants and Tenants were ſufficient deſcriptions of the perſons, whom the King ſued, and yet this Suit by thoſe Names, works no concluſion that they were a Corporation.

So Cives Burgenſes & Communitas of ſuch a Place, are general Names to deſcribe the Inhabitants of the Place by, antecedent to their being a Corporation. The like of Mayor, Baylif and Burgeſſes, Mayor and Citizens and Pontenarij, where Burgeſſes is but an Addition of the Name of an Officer to the Common Name of the Inhabitants, and properly deſcribes the Perſons whom the King ſueth. By theſe Names of general deſcription, they are capable to take this Right of Incorporation by the Kings Grant.

The Grant doth not enable them to take this Right; and if by ſuch general Names in the Kings Grant they may take, there can no reaſon be Aſſigned, why they may not be Sued by the ſame Name they took by, when they are queſtioned for this Right, be the Name of Corporation the ſame or any other. Upon Pleadings in the Caſe of a common Perſon Major & Cives ſhall not neceſſarily be intended a Corporation, without it be eſpecially ſet forth.

Inter Jerom & Neal. 20 Eliz. B. R. 1 Leonard 106. In Treſpaſs and Battery, the Defendant Pleads Salisbury an ancient City: And a cuſtom there, that if any Affray be committed upon any Officer, upon Complaint to the Mayor, he as a Juſtice of Peace, might ſend for the offender, and juſtifies under the Commandment of the Mayor, to bring the Plaintiff before him: And on Demurrer joyned and Judgment againſt the Defendant, one of the grounds thereof was, that it did not appear that Salisbury was a Corporation, altho it did appear Salisbury was a City, and had a Mayor; much leſs ſhall it conclude the King who is not ſo ſtrictly bound in his Suits as common Perſons are: 'tis true that in the Caſe of Maidenhead, there are three Judges againſt Mountague, of Opinion, that they need not ſet forth they are a Corporation, becauſe they are not Queſtioned for it by their Information, but ſuppoſed to be one, and Queſtioned only for a Market, which they claimed by the Kings Grant; In the ſame Caſe it is agreed, if they had been Sued by any other general Name, but the very Name of Incorporation, they ſhould not be Intended a Corporation, according to the Caſe of the King againſt the Corporation of Denbigh. And whoever looks into the Record, muſt conclude Mountagues Opinion, to outweigh that of the other three Judges. Palmer.

The Suit againſt them was by the Name of Pontenarij.

The Grants which they Plead recites the Corporation of the Pontenarij to be diſſolved, and the Grant is a new Grant to the Bridgmaſters.

So that there was no Room for any Intendment, that it was a Corporation before the Grant, againſt their own Plea; But that which ſeems in the Caſe to have preſerved the Bridgmaſters is, that the Judges inclined to an Opinion, that it being for Maintenance of a Bridge, which was of neceſſary and publick uſe, the Grant it ſelf might amount to a new Incorporation, which was a plain waiver of the former Opinion; and if the three Judges had continued their Opinion, Judgment would have been Entred for the Defendant; But no Judgment was ever given in that Caſe: So that Mayor, Citizens and Commonalty of London being a General Name, ſufficiently, deſcribing the Perſons againſt whom the Suit is brought, may be uſed in the Kings Suits, without any manner of Concluſion to the King.

But in the next place it is yet ſtronger, where one of the Articles of the Suit, is for Uſurping the Corporate Right, that prevents all colour of pretence for any Concluſion; herein this Caſe differs much, from that of Maidenhead, as to the Form of the Information. And in ſuch Caſes, where the Queſtioning the Right is a ſpecial Article,

the form of the Information is the same against all Corporations, whether by Title or altogether Usurped, and by Wrong, the Suit supposeth them all to be by Wrong, and Usurped; and whether by Right or Wrong cannot be known, till the Title by Pleading be disclosed and discussed, and many Times not then neither, because the Liberty may be lost by Default of Pleading upon nihil dicit, or Mispleader, by Pleading a Wrong Title, or insufficiently Pleading a Right Title.

B. R. R. 5. Car. 1. Rot. 28. A Quo Warranto contra Præpositum & Burgenses Burgi sive villæ de Card, for claiming to be a Corporation, and divers other Liberties: They Plead, they claim nothing but under the Bishop of Bath and Wells. It appears by the Plea, that they had no good Incorporation, and Judgment might have been entred against them.

But the Bishop obtained a Grant from the King, of a new Incorporation, which I have seen and perused, And thereupon a Noli prosequi was Entred.

Hill. Car. 1. Rot. 25. A Quo Warranto against the Commonalty of the City of Canterbury, for claiming to be a Corporation, and divers other Liberties; they Plead to all, and several Issues taken in several Parts of the Plea, and Breaches Assigned to others for a Forfeiture. Quo Warranto against the Bayliff and Aldermen of new Radnor is of the same Nature, and

B. R. Mich. 29 Jac. Rot. 17. Multitudes of others I could produce, where the Suit is brought in the same Form as ours, to question the Right of a Corporation against them by their Corporate Name.

My last answer is, that where the King proceeds for a Forfeiture, upon Breach of Condition, the Right is not determined till Judgment of Seizure; for its a mistaken ground, that Forfeitures to all purposes relate to the time of the Forfeiture: For as to Copyhold Estates, Offices and Liberties in Case of the King, which may be Determined by Breaches of Fact; they are not avoided till the Fact, which causes the Forfeiture, be found upon Record: So that the Suit is well grounded against them, by the Name of Mayor, Citizens, and Commonalty, for they continue such till Seizure, and till then are a Corporation de Facto.

Obj. to Repl. I shall be short in my Answers to the Objections to the Replication, because they are in effect already Answered, by what I have said.

The Traverse of the Title by Prescription is Pursuant to the supposal of the information, which supposeth they have Usurped that very Liberty, and puts them upon shewing their Title by that Name. And put Case they have a good Title by that Name by this Patent, or by Act of Parliament, and they will wave it, and set up a Title by Prescription; And this was done in the Case of Canterbury before, and in the Case of New Malton.

Trin. 6. Jac. Rot. 3. Where upon the very same Information as ours, against the Bayliff and Burgesses of New Malton in Com. Ebor. they pleaded their Title to their Corporation, by Prescription, and Issue taken, and it proved fatal to them, for Verdict and Judgment went against them.

Then for the Contrariety of the Replication to it self, none appears; for the traversing of the Prescription by such Name is no Denial, but it may be a Corporation by Prescription by another Name, or it may have that Name also by Grant.

And the farther Replication is, that assuming upon themselves to be a Corporation by that Name, they committed the several Acts which are Assigned for Breaches.

And that is the only Advantage the King hath. By Informations of Quo Warranto, he may go upon the Title, and take advantage of any defect therein, or of the Pleading thereof, and may also Assign Breaches for a Forfeiture, as is held in the Case of Maidenhead Bridge.

In the Case of Canterbury Issue was taken upon some Liberties, Breaches Assigned to others. The King may Plead several Pleas, and take several

ſeveral Iſſues; and demur to part, as he ſhall be adviſed.

3. The Objection, That no Judgment can be given upon theſe Pleadings, ariſeth principally upon two notable Errors, againſt plain and expreſs Authorities of Law.

1. That nothing can be ſeized into the Kings Hand, which the King cannot hold and enjoy when 'tis there.
2. That every Judgment upon a Forfeiture, ought to be a Judgment of Ouſter.

Theſe miſtaken grounds have been ſo often made uſe of by Mr. Recorder in other parts of his Argument, for ſupporting a Suppoſition, That a Corporation cannot be forfeited; I ſhall (to avoid Repetition) leave them to be conſidered when I come to his main Argument; and therefore ſhall proceed to conſider the preliminary Points moved relating to the matter;

1. Whether the Right of Incorporation of being a Body Politick, may be forfeited or ſeized into the Kings hands?
2. Admitting it may be, then, Whether the Acts of Common-Council, or the Members aſſembled in Common-Council, which is all one, may work ſuch Forfeiture or cauſe of Seizure.

As to the firſt Point, I muſt confeſs the weakneſs of my Underſtanding, that upon what hath been offered from Reaſon or Authorities of Law, I cannot apprehend it rendred in the leaſt doubtful to a Court of Law, whatever it may be in a Common Hall and publick Aſſemblies of the City, where ſtrong Lungs have a preference before a rational Head; But that the Right of being a Body Politick may be forfeited or ſuſpended.

It was moved as a doubt by Mr. Sollicitor, but as a vulgar Error obtruded from public Prints upon the unthinking and unwary Citizens; which poſſibly gave encouragement to the many Exorbitances committed within the City, and particularly to thoſe now laid to their charge.

And I thought ſufficient had been ſpoken by Mr. Solicitor to have prevented the growth of ſo miſchievous an Error.

But for that Mr. Recorder did ex animo eſpouſe that Opinion, as if no man were in his right Wits, that did not concur with him in Opinion: And as if there were ſomething in it indeed, hath laid his main ſtreſs upon it, and erected it as his Palladium to defend the City by.

And probably this Image (for if examined I fear 'twill prove no other than a Work of Imagination) may make that Impreſſion upon ſome men, that conceiting themſelves to be Citizens and Aldermen of an invincible and immortal City, incapable of diſſolution, they may dream of being an Independent Commonwealth within a Kingdom, and unaccomptable to the King or his Laws.

It is therefore made neceſſary for me (with your leave) to miſpend ſome of your time in ſpeaking again to this Point.

Which I ſhall do,

1. By briefly ſtating what this Right is; whence it ariſeth, and for what purpoſe it was framed or introduced?
2. I will examine the Reaſons and Grounds produced by Mr. Recorder, why it cannot be forfeited.
3. Then I ſhall offer the Reaſons and Authorities of Law, That it may, and hath been forfeited and ſeiſed into the Kings Hands.

In ſpeaking to all which, I will not ſo far diſtruſt the memory of the Court, as to repeat what hath been ſo well urged by Mr. Solicitor from Reaſon and Authorities, but ſhall endeavour to avoid it what I can. As to the firſt thing propoſed;

This Right of a Corporation aggregate of many (to which I ſhall confine my Diſcourſe, being the only Thing under conſideration) is a Right granted to many Natural Perſons, to be, have, enjoy and act as one Body and Perſon.

It

It confers Jus perſonæ & perſonam efficit, which our Law Books expreſs by the Names of Perſona Politica & Corpus Politicum, and as ſuch is capable of all Civil Rights both habendi & agendi.

The Inſtruments of creation of this Right, and the claims thereof upon Pleadings, do beſt declare the nature of it, viz. Quod homines Inhabitantes, Cives, Burgenſes, or ſuch other general Name, deſcribing the perſons who are to take, ſint unum Corpus Corporat' re facto & nomine.

And when Preſcription is made for a Body Politick, &c. Quod homines & Cives, or Homines & Burgenſes ſunt, & à tempore cujus, &c. fuer' unum Corpus Corporatum re & facto per nomen.

So that it is ſomething more than a Notion or mer name, Corpus Corporatum fully expreſſeth it; A Body made up of ſeveral Viſible Bodies in unum collecta & vinculo Juris unita.

And a Corporation is every whit as Viſible a Body, as an Army: For though the Commiſſion or Authority be not ſeen by every one; yet the Body united, by that Authority, is ſeen by all but the blind: And if the King or the Law demand the Authority, it muſt be produced and ſhewn, and is as viſible in the Eye of the Law, as any other Right whatſoever, whereof Natural perſons are capable.

It ſeems ſtrange, and almoſt beyond all Excuſe, That the Recorder of London ſhould never have ſeen that great Body Politick aſſembled, unleſs he will excuſe himſelf, that he is the Mouth of the City and not the Eyes.

Co. 11.b. Sir James Bagg's Caſe, Co. 11.b. allows it to be ſuch a Right, that every Member ſeparately conſidered, hath a Freehold therein, and all joyntly conſidered, have an Inheritance which may go in Succeſſion.

Co. 11.b.f.29. Lit.250. Bract.28.fo.56. It is the ſame Right which the Civilians ſtyle, Collegium or Univerſitas, and ſo ſtyled here in Bracton's time; ſcil. Si Rex conceſſerit alicui- —— Univerſitati, ſicut Civibus vel Burgenſibus.

Co. 10.b. fo. 14. Natural Perſons, as ſuch, are capable of taking and holding this Right.

It is neither taken nor held in their Politic Capacity, but their Natural; for many men, as men, are capable of Union, which is evident by the Charters of Creation, and the Pleadings in all ſuch Caſes; It is Homines & Burgenſes, Homines & Cives, are conſtituted Unum Corpus Corporatum.

And as the Natural Perſons are an eſſential part conſtituting the Body Politick.

21 Ed.4.fol.14. So all the Operations and Exerciſe of this Right are only performed by the Natural Perſons, 21 Ed.4. f.14. That Book and other Authorities are expreſs in the Point, though in a Caſe ſo evident there needed no Authority.

And therefore when the Queſtion is of Non-uſer or Abuſer of Franchiſes by a Corporation, it muſt of neceſſity be intended for ſome Acts or negligence of the Natural Perſons, or thoſe Officers that are employed by them.

And the Queſtion will reſt only upon this, What Acts, or what Omiſſions of the Natural Perſons will affect this Right, wherein all the Members of the Body have an Intereſt.

This Right is meerly of human Inſtitution, and therefore as to its birth, form, extent or limits, is directed and ſupported by the Municipal Laws of each Country, and therefore for that Reaſon is ſtyled by our Books, Political.

By the Conſtitution of our Laws this Right, as all Juriſdictions and Franchiſes, are lodged in the Crown, and thence only are derived.

Bracton upon the Queſtion, Quis concedere poſſit libertates, & quibus, & qualiter transferuntur. Thus reſolves it:

Dominus

Dominus Rex habet omnia Jura in manu ſua, quæ ad Coronam & Regalem pertinent poteſtatem & Regni gubernaculum; habet etiam Juſtitiam & Judicium, quæ ſunt Juriſdictiones; habet etiam ea quæ ad pacem pertinent. Ea quæ dicuntur Privilegia licet pertineant ad Coronam, poſſunt ad privatas perſonas transferri, ſed de gratia ipſius Regis ſpeciali.

And then ſheweth that ſuch Grantees, as Uſufructuaries, may enjoy them donec amiſerint per abuſum, vel non uſum.

The whole current of our Books to this day, concur with this ancient Author in this Point.

That none can make a Corporation, but the King; ſuch Power cannot be preſcribed for, it is ſo inherent to the Crown. 49 Edw. 3. 3.

The principal Caſe was of the Whitelawers in London, who preſcribed, That by the Cuſtom of London, the Men of any Art or Myſtery might act as a Gild or Fraternity, and capable of a Deviſe; and plead their Cuſtom confirmed by ſeveral Charters; and no doubt would have pleaded ſome of the Acts of Parliament now pleaded, if the Learned Council had then thought there had been any thing of force in them.

Judgment was given againſt them, for that none had ſuch Power, but the King: In that caſe it appears, that the Abbot and Prior of Weſtminſter were one entire Corporation and divided by the King, and after the ſeverance a Quare Impedit maintained by the Prior againſt the Abbot.

Some Corporations are by the King alone, as Dean and Chapter, Mayor and Commonalty; ſome by the Pope alone; ſome mixt by the King for their Temporal Poſſeſſions, by the Pope for their Spiritualities. Bro. Corporat. 34.

Whether the King grant them by Charter out of Parliament, or in Parliament, or by Act of Parliament, The King is ſtill the Donor, and the Fountain and Spring, from which this and all other Liberties flow.

A Title by Preſcription always ſuppoſeth a Grant in or out of Parliament; And is allowed by Law for ſupporting long Poſſeſſions, grounded upon ancient Grants before time out of memory.

But by what Title ſoever theſe or any other Rights are derived down, whether Grant or Preſcription, their Natures remain the ſame.

And they are governed by the ſame Rules of Law, and are equally ſubject to the like civil Accidents the one as well as the other.

The laſt thing inquirable into this Head is,

To what end and purpoſe ſuch Corporations were erected, and allowed by the policy of our Laws.

The general intent and end of all Civil Incorporations, is in order to better Government.

Government relates either principally to Perſons or Things:

That which relates principally to Perſons, may be properly called General Government; becauſe properly ſpeaking, perſons only are the Subjects of Government.

That which relates to Things, is called Special Government; becauſe limited to the managery of particular Things; as, Trade, Charity, and ſuch like; for the Government whereof ſeveral Companies and Corporations for Trade were erected, and ſeveral Hoſpitals and Houſes for Charities.

Of this Nature are the Trinity-Houſes for regulating Navigation; And ſo the College of Phyſicians; The Corporation of Pariſh Clerks; and a multitude of other Special Corporations in England.

The only End of erecting theſe Special Corporations, was for the better Order and Government of the ſeveral Matters ſpecially committed to their Care.

The Corporations for General Government only, are thoſe of Cities and Towns, Major and Citizens, Mayor and Burgeſſes, Major and Commonalty, and ſuch like.

The Corporations, as they are for the Government of Men only, having nothing Specially committed to their Care upon the Incorporation; ſo they are erected for no other end or purpoſe than Government.

And if either at the Time of the Incorporation, which very few are, or afterwards they have any Special Matter committed to their Care, It is purely collateral to the Ends and Deſign of erecting theſe ſort of Incorporations within Cities and Towns.

This appears by the Charters of Creation, both ancient and modern; the Form is much the ſame, which is after this manner:

Nos volentes, quod de cætero imperpetuum in eadem Civitate, Burgo, aut Villa [as the Caſe is] Libertat' & Precinct' ejuſdem habeatur unus certus & indubitatus modus pro Cuſtodia Pacis noſtræ, ac pro bono regimine & gubernatione Civitatis Burgi & Villæ ac Populi ibidem Inhabitantium & aliorum illic confluentium: Et quod Civitas, Burgus, aut Villa, Pace concordia & quiet' ſint, ad formidinem & terrorem Malorum delinquentium, & in præmium bonorum. Ac etiam ut Pax noſtra ceteraque facta Juſtitia & bono Regimine ibidem, melius cuſtodiri valeant & poſſint.

Theſe are the grounds upon which Corporations are erected.

The Limits and Extents of their Corporations, and Juriſdiction are Limited by their Charters.

And there is a plain difference made in many Charters between this and other Liberties, as to the end of granting.

This being erected only pro bono Regimine, being a Burden and Chargeable in the Execution of that public Truſt.

Many other Liberties and Priviledges, both of Eaſe and Profit, are granted to them pro meliore ſuſtentione of thoſe Charges which the Government would neceſſarily require.

Since the Statute of Mortmain, they cannot purchaſe without a ſpecial Non obſtante.

They cannot engroſs Trade by excluding Forreiners; Norris and Staps Caſe, Hob. 211. Hob. 211.

So that no private Benefit can be aſſigned, to be the End of Erecting them.

The power of making By-laws, which is incident to a Corporation, is only for better Government: And by that Rule they muſt be judged.

Having conſidered the Nature of a Body Politick aggregate, whence it flows, and for what purpoſe it was erected,

Secondly, I proceed to examine the Grounds and Reaſons produced, why it cannot be forfeited or ſeized into the Kings Hands.

Many things were produced by Mr. Recorder, to make good his Aſſertion, more ad Captandum Populum, than to perſwade in a Court of Law.

I will not miſpend your Time in peruſing the Jocular part of the Argument; which may make the Citizens ſmile one way, and the Learned in the Law another way.

But I ſhall collect together what ſeems to have any force of Argument.

The Grounds the Argument went upon, ſeem to be theſe:

1. That a Corporation is no Liberty or Franchiſe; but a mer Capacity of Suing, and being Sued.
2. That a Corporation in its Nature, is not capable of being Forfeited or Diſſolved.
3. That it cannot be Surrendred.
4. That the Forfeiting or Diſſolving of any Corporation was never put in practice, nor ſo much as ever came within the Compaſs of any Mans Imagination.

1. As

1. As to the firſt, A Corporation is no Liberty, but a Capacity.

Now it is proved even juſt as all the reſt will appear to be proved, by ſtrong Averments, and Quotations of Books that prove no ſuch thing.

The Authorities were 1 Inſt. 250. Bro. Title Corporation and Capacities.

In the Inſtitutes the Words are, a Body Politick is a Body to take in ſucceſſion, framed as to that Capacity by Policy.

The Authoritie is expreſs againſt him, that a Body or perſon politick hath a capacity to take in ſucceſſion, and is not a meer capacity; And the other Words of the ſame Author are; And made into a Body and Capacity to take and Grant: So that this Authority fails, It neither proves it no Liberty nor to be a meer Capacity.

That of Bro. tit. Corporation, proves leſs, for Capacity is of larger Signification and Incident to natural Perſons, as well as Corporate Perſons, and ſuch Inſtances are ſet down under that Title of Alien nees, &c. And 'tis a great Imputation to the Memory of ſo Learned a Perſon, that he ſhould think that Corporations and Capacities were Synonimous, or that he ſhould Taurologize, in a Title in an Abridgment.

The Definition Mr. Recorder gives of a Corporation, that it is a Capacity of Suing and being Sued, which ſerved him for many a Jeſt in his diſcourſe; is no better than to define a Man to be animal bipes, or which is nearer, a meer Capacity of walking with two Feet; although the Authorities fail and prove not the matter, Yet it is of that Importance to the Cauſe, that a Corporation be no Liberty, that ſomething muſt be thought upon to make it out.

For if it be admitted to be a Liberty, the Authorities will be too ſtrong, that every Liberty and Franchiſe carries with it a Condition, that it be uſed and well uſed, the Breach of which will amount to a forfeiture. And therefore when nothing elſe can be found to prove it no Liberty, Recourſe muſt be had to the Negative Argument, backed with ſtrong Averments, that it was never ſo ſtiled in any Authority of Law, except in one Caſe, in the Town of Helmſly, Co. Ent. Quo Warranto, and Mr. Noys Opinion, in Hayward and Fulchers Caſe, grounded only upon the Caſe of Helmſly: But one Swallow makes no Spring; And it was well Mr. Recorder ſpied it in that Caſe, otherwiſe the Averment had been without any Exception. Co. Ent. Q. W.

If the point had reſted upon that Precedent, and Mr. Noys Opinion, it would have better Authorities for it, than any could be produced againſt it. But there are multitudes of Authorities, whereby Corporations are not only called, but appear to be Liberties and Franchiſes; ſeveral have been cited by Mr. Recorder, but not ſeen, or over-lookt by him. Reſp.

In the Caſe of Cuſack and others, in all the parts of the Record, it is ſtiled a Franchiſe or Liberty, and particularly in the continuance, Curia adviſare vult, and time taken to adviſe upon it as a Liberty. Paſch. 17. Jac. Rot. 2.

So in the Caſe of Farrer, and others of the Virginia Company, throughout the Record ſtyled a Liberty and Franchiſe, even in the Judgment it ſelf. Mr. Noy knew of theſe Caſes and many more before this time, but knew it to be the Guiſe of Learned Men, in clear Caſes and of daily experience, not to repeat many Authorities. Mich. 2. Jac. R. 39.

The Records of the Caſes cited by Mr. Recorder of the Borough of Hebmerly, the Caſe of the Muſicians, and Burmudas Company, &c. do all call it a Franchiſe or Liberty.

The Caſes I have already cited do ſo too.

Againſt the Bayliff and Burgeſs of New Malton. T. 6. Jac. R. 3.

Againſt the Mayor and Commonalty of Canterbury. Hill. 2 Car. 1. R. 25.

Againſt the Portreeve and Burgeſs of Chard. P. 5. Car. 1 R. 28.

Many more I have peruſed, but conceive it too much to trouble the Court with them at preſent. It is certainly true in all the Records of Quo Warranto, wherever there is a ſpecial Article againſt a Corporation, for being

being a Body politick, it is always impeached by the Name of a Franchise and Liberty, and Multitudes there are of that Nature. And in so clear a Case, I omit to mention the Writs of Non omittas, for entring into Corporations; and the Returns of their Bayliffs, which make out evidently that Corporations are Franchises, and the Limits of the Corporation and Limits of the Franchises are all one.

2 Argument. The next Argument is drawn from the nature and qualities of Bodies politick.

That they are Invisible, Immortal, Impeccable, and therefore Impatible, with a large Jargon of non ens, & ens rationis.

Certainly this Argument was fetched from the Clouds at the Cities charge. And it cost them dear: For I cannot believe it could enter into the Reason of any Man, much less of Learned Men,

That a Body framed by the policy of Man can be Immortal, or that a Body compacted of many bulkie, visible Bodies, can be Invisible; or a Body, whose very parts and members are Mortal, is in its own nature Immortal: Mr. Recorder admits; the Death of all ends the Corporation.

And therefore if any learned Men have used such Hyperbolical Expressions, most certainly they never intended the Citizens of London, or other populous Town or City within England, of whom the question is. But of some Corporation in Eutopia, where the Citizens neither Eat, Drink or Dye; or at least of some Corporation, that never had other existence but in the Brain.

The Authorities cited were, Co. 1. Inst. 9. Fulstrod 233. 21. Ed. 4. 13. and many others and many more might have been cited, and to as much purpose, as Co. 10. fo. 32. Suttons Hospital brings in a whole Regiment of Authorities, speaking to the same purpose. I do not remember that Book was cited, and there was reason for it, for in Conclusion it spoils the Argument, Viz. that these Expressions are of Corporations in abstracts, not coupled with particular Men of this or that Town, where the Men act all, and the Corporation doth nothing otherwise than what the Men do.

If it be considered abstracted from particular Men, It is but a bare Right, and coupled in the Notion of it, with Men in general, who are the proper Subjects of Government, and remains only in Notion; and may well enough sustain these Epithites as have been given it, as all other Rights and Notions may.

But whilst it remains such it can no more Sue or be Sued, than commit Treasons, Felonies, Riots, or other Trespasses, either against the Government or particular Men.

Neither hath it any Existence in re & facto, but in the Brain.

The Case indeed that is cited, 1 Inst. 9. is applicable to any particular Corporation: The Case is thus put; If a Man gives Lands to a Mayor and Commonalty, or other Body aggregate, consisting of many capable Persons, without naming Successors, The Law construeth it a Fee simple, because in Judgment of Law they never Dye.

If this be any Authority, it is from the Immortality of many Persons capable, for they are the Persons who are said, in Judgment of Law not to Dye.

Where my Lord Cook's Sense is plain, that these natural Persons, though capable to take in their natural Capacities joyntly, which the Law would adjudge an Estate for Lives; Yet the Grant being made to them by their Corporate Name, they take in that Capacity, and the Grant not determinable upon their Death, but shall continue with the Corporation whilst it continueth.

That my Lord Cook never dreamt of Immortality of a Body Politick, fully appears in his Writings.

1 Inst.

1 Inſt. 13. Where he puts the Caſe inſiſted on by Mr. Recorder, of a diſſolution by Death of Abbot and Monk; he after puts the Caſe generally of other Corporations, as Dean and Chapter, Mayor and Commonalty; If Lands be given to them, and the Corporation be diſſolved, the Lands ſhall Eſcheat to the Donors, upon a Condition in Law; in the firſt Grant, if the Law raiſe ſuch Condition upon Grant of Lands, much rather doth it upon the Grant of the Incorporation; where the intent of the Donor is as ſpecial and upon a greater truſt.

That my Lord Cooke underſtood it of other diſſolutions than by Death only, he refers in the Margent to the Caſe of the Knights Templers, which was not diſſolved by the Death of the Members.

That Corporations were diſſolved many Years before the Statute de terris templariorum 17. Ed. 2. The Statute recites the Corporation was diſſolved; And that the King and ſeveral other Lords had entred upon all their Lands and Eſcheats. The Judgment of the Parliament was, they were well diſſolved, and the Lords well intituled by Eſcheat as the Law ſtood, and therefore by Act ſettles them upon the Hoſpitallers. This Corporation was diſſolved by the Pope, and upon the ground of non uſer. The end of their Corporation was for guiding Chriſtian Pilgrims to the Holy Land and Jeruſalem, which the Saracens and Turks having over-run and poſſeſſed themſelves thereof: The members of the order never come there, but diſpoſed of themſelves in ſeveral parts of Chriſtendom. The order was erected by Pope Honorious 21. H. 1. An. 1120. and was diſſolved by Clemens Quintus, 4 Ed. 2. An. 1311. Thirteen years before the Statute, and their Spiritual Corporation which was the principal, being diſſolved, the power of holding Lands conferred by Temporal Princes determined, 2 Inſt. 431. & H. 432.

1 Inſt. fol. 102. The Caſe is put where the Tenant held by Homage Anceſtrel of a Body politick diſſolved, the Homage is gone, though a new Corporation be founded by the ſame Name.

That my Lord Cook never entertained ſuch an Opinion, appears by his Argument in the Caſe of the Dean and Chapter of Norwich, when Attorny General.

His Miſtreſs's Heart was much upon that Caſe, to preſerve their Lands: and it was well argued by Mr. Attorny, and no doubt well Studied, but this Topick from the Indiſſolubility of Corporations never came into his Head. Beſides the Statutes of Confirmation, he inſiſted upon theſe things. 1. That the words of the ſurrender were not ſufficient to ſurrender the Corporation. 2. That they were the Biſhops Council, and in ſome ſort one Corporation with him. 3. From the great Miſchiefs which would enſue.

This new Invention alone would have done the Buſineſs, if he had been ſo fortunate to have found it out.

Or if any of the Judges had thought of it, they would not have gone about it ſo long, as at length to ground their reſolutions only upo the points which did ariſe upon the Statutes.

Fitzherbert is of the ſame Opinion, that if an Abby be diſſolved, a preſentation ſhall Eſcheat to the Lord of whom it was held. Fitz. N. br. fo. 33.

The next Argument produced by Mr. Recorder was, That a Corporation could not be Surrendred. 3 Arg.

Upon which Head, I will not entertain your Time at preſent, for theſe reaſons,

1. Becauſe it was not to the Queſtion, and that Mr. Recorder admits that many things may be forfeited, which cannot be ſurrendred.
2. Becauſe the Point may come judicially into Debate, ſome diſlike having been taken to ſurrenders lately made, and I chooſe to refer my ſelf to that Queſtion which comes properly in Judgment.
3. But my laſt and principal reaſon is, that he hath produced no Authority of Law, to make good his Aſſertion.

The Authorities of the Cases of the Dean and Chapter of Norwich, Mich. 40. & 41. Eliz. and Hayward and Fulchers Case, Hill. 3. Car. 1. which both relate to the same Surrender, and are in effect the same Case, only in the latter Case the Surrender is disclosed to the Court to be larger than did appear in the former Case.

And though many Books are cited, yet they all contain but these two Cases, which make strongly against him.

For throughout these Cases, both in stating the Question, Arguments of Council, and Resolutions of the Judges; It is plainly admitted that a Corporation might be surrendred.

Otherwise the stating of the Question in the first Case, upon the effect of the Words in the Surrender of all their Possessions and Cathedral Church, whether sufficient to Surrender the Corporation, and the Arguments thereupon, and the Resolution of the Judges (It is plainly admitted, that a Corporation may be dissolved;) and 'twas the Common Law Point they did resolve that they were all idle and illusory.

Palmer 501. Jones 168. Palmer 503. And so in the second Case, Whether the Dean and Chapter, without the Bishop, could Surrender the Corporation? It is all along admitted, both by the Council upon the grounds they went upon, and by the Judges in their Resolutions, that it might be Surrendred Concurrentibus his quæ in Jure requiruntur. And therefore by the Resolution of the Judges, it could not be done without the Bishop, because he had an Interest in them.

And when Whitlock in his Argument had recourse to a more general Reason, which was, That the Surrender could not be good, because then they should be Felo de se, which is against Nature.

Jones takes him up, and flatly denies it, and saith, That a Dean and Chapter might dissolve themselves by Cesser; or if all dye, or resign, the Corporation is dissolved; but concurred with him, That the Surrender did not dissolve it, because the Bishop was no party, nor consenting: And in the end, Whitlock concludes his Argument, That it could not be done without the Bishop.

And the Saying of Whitlock in that case, That a King may grant, but not dissolve a Corporation, is certainly true in the same sense, as it is of Lands, and all other Rights whatsoever; The King may grant, but cannot resume without cause.

Yet all may be Forfeited upon due Cause, and by Judgment of Law returned to the King.

Fourth Arg. The last Topick of Argument by which Mr. Recorder concluded, a Corporation cannot be forfeited, is a non user; Because never any Corporation was forfeited, nor did it ever enter into any mans Imagination, that it could be forfeited.

This indeed doth put the Proof upon me.

And Mr. Solicitor hath already made it out with great Learning, by several Instances of Corporations seized into the Kings hands for Forfeitures committed by them; some by Judgments, others by Inquisitions finding those Forfeitures.

But Mr. Recorder with one blast hath blown them all away, that they are but mær Sounds, and look big with Seizure, and seizing of Liberties into the Kings hands; but when strictly examined, they are of no substance: And the fruit of all the Examination ends in a difference he hath found out betwæn Seizures and Forfeitures; much such another difference as was that betwæn a Liberty and a Capacity, upon which the whole weight of the Argument turned, That a Corporation was no Liberty, but a Capacity.

And if so little a distinction be enough to answer the weight of Mr. Solicitor's Arguments, it will be in vain for me to attempt further Instances, unless I can reconcile this little difference, and shew it to be as ineffectual as that betwæn a Liberty and a Capacity was before.

And

And therefore I crave leave in the firſt place, to examine this ſhort Anſwer to ſo many and ſo great Authorities.

Objected, That thoſe are Precedents of Seizures, but not of Forfeitures; for Seizures in the Caſe of the Kings Suits and of the Biſhops Temporalties, are of the ſame nature as Seizures upon the Grand Cape's and Diſtringas, in Suits between party and party, only to anſwer Iſſues.

And when Liberties of Towns are mentioned to be ſeized, the Towns only are ſeized, and not the Corporation, which remains in ſtatu quo; but where a Forfeiture is, there muſt be Judgment of Ouſter.

Every Sentence almoſt of this Anſwer is contrary to all the Books and Records of Law, that I know of.

The Authorities cited to prove the differences are Nat.Brev. fol. 161, 162. which ſaith, Inquire into the Cauſes of Seizures, and Cauſes of Forfeiture; but what theſe Cauſes are, which may be Cauſes of one and not of the other, are not diſcloſed. But my Lord Coke in the Counteſs of Shrewsburies Caſe, determines the difference, and makes them all one. Co. 9. fo. 50.

There are (ſaith he) three cauſes of Forfeiture or Seizure of Offices for Matter of Fact, Abuſer, Non-uſer, and Refuſer. He makes the cauſes of both to be the ſame, Forfeiture is but the Fact upon which the Seizure is grounded, where the Subject hath Title of Entry for a Forfeiture, in the Cauſes of the Entry, different from the Cauſes of the Forfeiture.

So in the King's Caſe, where Liberties are ſeiſed for an Abuſer, whether it be by Judgment, or upon an Inquiſition or Preſentment, finding the Abuſe; can it be a queſtion with any Learned Man, but the Seizure is for the Forfeiture? The King cannot Seize without cauſe, and the cauſe muſt be ſome Fact in breach of the Condition in Law annexed to the Liberty.

The other Authority produced, is of the Quo Warranto againſt Roger Mortimer, cited 2 Ed. 3. 29. in Strata Mercella, where upon denial of Aid, and the Defendants not anſwering over, Judgment was given of Fore-judger of the Liberty, and Error brought; where Scroop ſaith, That in ſome caſes Franchiſe ſhall be put into the Kings hands, in ſome caſes ſeized in the Right of the King until Fine, and in ſome caſes it ſhall be Fore-judged, which holds for ever. Co. 9. fo. 28.

I do admit this Caſe to be good Law, but it makes nothing to the purpoſe to prove the difference, or that Seizures by the King for Miſuſers are not for Forfeitures, or that Judgment of Ouſter are only Evidence of Forfeitures, or to prove a Seizure in the Kings Suit, is of the ſame nature as the Grand Cape or Diſtringas, upon mean Proceſs in the Suits of common Perſons.

And becauſe neither the Book Caſes, nor Mr. Recorder have given any light into the Caſes, which may carry the Judgment in a Quo Warranto,

I will endeavour to ſtate the Matter, how it ſtands upon Seizures of Liberties:

1. Liberties may be ſeized into the Kings hands by Award of the Court, which in that Book is ſtyled, Put into the Kings hands; and that in two Caſes principally:
   1. Where the Defendants are ſummoned to appear at the King's Suit, and make defaults.
   2. Where a Contempt appears upon Record, in returning or executing the Kings Proceſs.

I ſhall give Inſtances of each.

For the latter, 2 Ed. 4. fo. 5. in caſe of Bailiffs, upon Error, the Bailiff appeared and prayed a day to bring in the Record; they failed at the day: The better Opinion is, their Franchiſe ſhall be reſeized. And Vavaſor there ſaith, If a Lord of a Franchiſe do any Treſpaſs or Contempt to the King's Court, it is cauſe in the ſame Court to reſeize the Franchiſe for the former, 15 Edw. 4. 6. in Quo Warranto, if the Defendant appear 2 Edw. 4. 5. 15 Edw. 4. 6.

appear not at the day, the Liberties shall be seized; and if he do not Replevin them, as in Eyre, they shall be absolutely forfeited, for the Statute of Quo Warranto directs the Kings Courts to proceed in Quo Warranto, as in the Eyre.

Trin. 16 Jac. Brigg's Case, in Quo Warranto, the Defendant appeared not at the Day; the Liberties were seized, Roll.Rep.2 part fo.46.

Trin. 17 Jac. Roll.2. part 92. Quo Warranto against the Mayor and Burgesses of Wygmore in Com.Lancast. upon default made at the Day, it was agreed by the Court, That if they shewed not good cause to excuse their Default, their Liberties should be seized into the Kings hands: This being in the Case of a Corporation, the Capias in manus would be of the Politick Person which made the Default.

Where Seizure is by award of the Court for a Contempt in Court, the Court may admit the parties to affix and order Restitution; so where by award of the Court on Default of Appearance at the Kings Suit a Seizure is made, which is in Nature of a Distress, to bring in the party by putting him out of the possession of the Liberty till he appear and Replevy. The Court (if the Defendants come in time, and pray it) may deliver them the possession upon Replevin; and this by the new Statute de Quo Warranto, 30 Ed. 1.

30 Edw. 1.

Before that Statute the general Writ of Summons to answer to Liberties, as also the particular Writs of Summons upon the Kings Special Suits, superseded the use of any Liberty till the Justices met on the Day of Return.

Which mischief was remedied by that Statute; if they appeared not at the Day, the Liberties were to be seized in nature of a Distress, to enforce their Appearance.

And upon Appearance, if they demanded to Replevy them, the Judges might deliver back the possession of the Liberties, upon security to prosecute their claim, and answer the mean Profits, if any, in case Judgment were against them; much in the same manner as the Practice is in the Court of Exchequer upon all Seizures to this day; by the Seizures the King is in possession: But if the party appear and plead, and put in Security, he is by Rule of Court permitted to receive the Profits.

But this Statute not limiting any time for his Appearance, or to Reply; that remained as it did before upon the old Statute of Quo Warranto, 18 Edw.1. which refers to the practice in Eyre: So that if the Party did not Replevin in time, the former seizure would amount to a Seizure after Judgment by default, which is final.

18 Edw. 1.

2. Again, Liberties are seized into the Kings hands by Judgment of Court in the Kings Suits, whether the Judgment be by default or Nihil dicit; Upon Demurrer or Issue tryed, this Judgment is Final, and the Court cannot admit to a Fine, or award Restitution, unless upon Error brought.

This Court is to set the Fine upon the Capiatur, but not the Fine for Redemption, that is purely in the Kings Breast, & ex gratia Regis. There is no such formal Judgment of Seizure until Fine; but this upon Judgment and another Seizure upon Inquisition, or Presentment, which I shall mention, are the Seizures in the Kings Right presented in Mortimer's Case, but frequently entred quousque Dominus Rex aliud perciperit.

What was intended by a Judgment of Ouster in that Book, and in what cases by the course of the Kings Courts it ought to be, will best appear by an ancient Rule, taken and agreed by the Judges in Edward the Fourth's time, before they were promiscuously used. The Rule is thus:

15 Ed.4.7.b.

Where

Where it clearly appears to the Court, That where a Liberty is uſurpt by Wrong, and upon no Title, either by the King's Grant, or otherwiſe, There Judgment only of Ouſter ſhall be entred.

But where it appears, that the King or his Anceſtors have once granted a Liberty, and the Liberty be miſuſed, Judgment of Seizure into the Kings hands ſhall be given.

Theſe Rules carry their own Light with them: That which came out of the Kings hands, as Bracton uſeth the word, is properly returned there again by Seizer, or (as our ancient Books phraſe it) by Reſeizer.

But that which never came thence, but meerly uſurpt upon him, ſhall be Vacated, and by Judgment of Law declared null and void.

There is another Caſe which is there likewiſe reſolved, and that is, Where it is doubtful to the Court, whether the Liberty commenced by Grant, or by Wrong; that for the incertainty the beſt and ſafeſt courſe is, that Judgment be given of Seizure.

This laſt Caſe was the principal Caſe in that Book, the Queſtion ariſing upon a default, What Judgment ſhould be given? and by that Rule Judgment was given of Seizure, not of Ouſter.

And agreable to theſe Rules, all the Judgments which I have met with have been given.

And this courſe hath been found moſt beneficial to the Subject, who though by Forfeiture, Miſpleading, or Default, he may loſe his Liberty, may have recourſe to the Kings Mercy for reſtitution.

In the Caſe of the Bailiffs and Aldermen of New Radnor, which was by Default, Judgment of Seizure was only given. Mich. 20 Jac. Rot. 17.

In the Caſe of New Malton, though the Iſſue, that the Corporation was by Preſcription, was tryed againſt them; yet having long acted as a Corporation, and might have miſpleaded their Title, as the City of London hath done, in claiming that by Preſcription which commenced by Grant within Time of memory; Judgment only of Seizure was given, and not of Ouſter. Trin. 6 Jac. Rot. 3.

In all Caſes of Diſclaimer, Judgment only of Ouſter ſhall be given; upon the ſame Rule Judgment only of Ouſter was given in the Caſe of Staverton, reported in Yelverton and Crook: But the Entry there is miſtaken; for it is entred Mich. 8 Jac. Rot. 2. for it appeared to the Court, that it was a meer Uſurpation without Title, for that no ſuch Court as he claimed could be gained by Preſcription, nor indeed by Grant, through the meanneſs of his Eſtate. Mich. 8 Jac. Rot. 2.

Mr. Recorder inſiſted upon this Judgment, as a meaſure for all Judgments upon Forfeitures of Liberties, but plainly miſtook the Reaſon of it.

Upon the Reaſon of theſe Rules, in ſuch Caſes where Grants do appear, but either the parties are not capable of taking, or the Liberty granted not allowable by Law, the courſe hath been to enter a mixt Judgment both of Seizure and of Ouſter.

In the Caſe of the Inhabitants of Denbigh, who claimed by Charter ſeveral Liberties; but it appearing they had no Capacity to take, yet the Uſurpation being by colour of Letters Patents, the Judgment was mixt both of Seizure and Ouſter; for there was no poſſibility of Reſtitution, becauſe they were not capable. Hill 27 Eliz. Rot. 15. Co. Ent. 537.

And in the Caſe of Cuſack it appearing to the Court, that the Liberties granted did not paſs, nor could be lawfully uſed; yet the uſurpation being by colour of a Grant, Judgment of Seizure was given as well as Ouſter in theſe Caſes, as likewiſe in Sir George Reynell's Caſe; and by Multitudes of Caſes of Offices Seized, it appears how vain the Objection was, that the King cannot Seize a Corporation, becauſe he cannot have it, or be the Head and Commonalty; for not only what the King may have or hold, but what he may diſpoſe of, are in Judgment of Law, ſaid to be in his Hands; and it is the proper office of the Hand diſponere as well as tenere. Paſch. 17 Jac. Rot. 2.

And what but colourably came out of the Crown, though it cannot subsist by Law in a Subject, shall be Seized, as in Cusacks Case.

3. In the last place there are other Seizures, which are by Process by Commission of Enquiry upon Inquisition found, or upon Presentment; and such are always for Forfeitures, upon faults found in breach of Conditions annexed by Law.

That the King is in possession of all incorporeal Rights by such Seizures upon Inquisition, appears by the Resolution in Sr. George Reynells Case.

In these Cases of Seizure for Forfeitures, no Court, or the Lord of the Liberty, whether Body politick or natural, can admitto a Fine, and thereupon to make Restitution; neither is there any other way by Law to take off the King's Hands but by direct traverse of the Fact, if the Fact found be not true; or by Demurrer, if the Fact found be not in Law sufficient cause of Forfeiture.

The Facts upon which such Seizures have been made, have been generally so notorious, and the consequence of Law upon them, taken to be so evident, that I never met with any such Inquisition, ever Traversed or Demurred to; but the Application for Restitution hath still been to the King's Grace.

And these Inquisitions have been taken either, ex officio by the Sheriff, or by special Commissions.

The Sheriff by his general Commission is intrusted with the Preservation of the whole County, and the publick Peace thereof.

And though in the Grant of Corporations and other Liberties, there be special Clauses Exclusive, Ita quod, &c. Yet these Clauses, as the Grants themselves have another Ita quod annexed to them by Law, that they preserve good Government, and do not abuse the Franchise, by committing or permitting Riots and great Disorders in breach of the publick Peace; which if they do, is by Law, a non omittas to the Sheriff to enquire and take care of the publick Peace within the Liberty.

15 H. 3. The Town of Hereford was seized into the Kings hands, by the Sheriff of the County, for holding of a Market, contrary to the Kings Prohibition. Upon Certificate thereof into Chancery, the Kings Writ Issues to the Sheriff approveing thereof, and commanding him to keep it in the King's hands, Donec Dominus Rex aliud inde preceperit. Rot. Clauso, 15 H. 3. memb. 7. Hales Lib. K. fol. 41.

Of seizure made upon Presentments and Inquisitions taken by Commissions, there are many instances, some whereof I shall mention when I come to the Precedents.

R. Cl. 15. H. 3. memb. 7.

The seizures upon Judgments, or for a Forfeiture, which are alwaies in the Kings Right, do as effectually put the King into possession, and oust the natural persons from using the Right as any Judgment of Ouster whatsoever.

And the difference between such seizures, and those upon the Grand Cape, which are only upon mean Process, and in Right of the Subject, and in his aid, is too apparent to be further inlarged upon.

There is some resemblance between this seizure upon the Grand Cape, and that in the Kings Suit for Default, that appearance for both are upon mean process, and both repleviable if the Defendant or Tenant come in time.

There is also a further resemblance between them, which maks not for Mr. Recorders purpose; and that is, in that both are lost for ever, if the parties come not in Time.

For at Common Law if upon a Præcipe quod reddat, and the Lands seized into the Kings hands upon the Grand Cape, the Tenant maks default, and come not within forty daies, he could not wage his Law to excuse his default, but the Demandant should have Judgment to recover the Land presently, 15 Ed. 4. fo. 7.

The

The difference that it was not the Franchiſe or Liberty of the Corporation, but the Towns themſelves were ſeized into the Kings hand, is as void of Authority as of Law.

Sometimes indeed Civitas & Villa in Records are uſed promiſcuouſly, for the Franchiſe and Freedom, which is jointly uſed and enjoyed by the Inhabitants, exempt from the Common Law Jurisdiction. And in ſuch Caſe the ſeizure of the City or Ville, and of the Franchiſe is all one, And the Inhabitants thereby put under the Government of the Common Law, diſcharged of the Franchiſe.

But if the Town or City be taken for the natural perſons who are the Inhabitants, or for the Houſes wherein they Inhabited, which they muſt be upon Mr. Recorder's diſtinction, otherwiſe it will be a diſtinction without a difference.

Neither the Inhabitants nor Houſes were ever ſeized, or could be ſeized into the Kings hands upon ſuch Inquiſitions as have been found, and Judgments of ſeizure that have been given.

The only proof for this difference was a ſtrong averrment, that whilſt the City of London, lay under the ſeveral ſeizures, ſometimes of the Mayoralty only, at other Times of the whole Franchiſe, The Corporation was as vigorous as ever, and in Statu quo; not ſo much as ſuſpended, but did exercile all Corporate Acts as before. An averment againſt the expreſs Senſe of all the Citizens when under thoſe ſeizures, and againſt many Authorities of Law.

At the Parliament, 18 Ed. 1. the Citizens (for they had then no Mayor) Petitioned the King in Parliament, Quod Rex velit eis concedere Priſtinum Statum, ſc. Majorem & antiquas Libertates. Roll. Prerog. 204.

They Petitioned not for their Houſes or the Liberty of their Perſons, thoſe were never ſeized, but to be reſtored to the Mayoralty and their ancient Liberties, which were under ſeizure in the Kings hands.

If the Corporation had been in Statu quo, they would not have troubled the Commons to preſent ſuch a Petition, nor the King to grant ſo idle a Petition, eis concedere priſtinum ſtatum; but they who knew their condition better than Mr. Recorder, could admit themſelves out of poſſeſſion both of the Mayoralty and their ancient Liberties, and pray to be reſtored to them.

And the Kings Anſwer was, He was not at preſent adviſed ſtatum mutare.

My Lord Cokes Opinion is, That the Chapter, when no Dean; nor Commonalty, when no Mayor, have not Capacity ſo much as to make Continual Claim, nor to take by Purchaſe, nor ſue any Action. 1 Inſt. 263. b. 21.

If the Commons of London meet on Michaelmaſs-day, and Chooſe a Mayor, the old Mayor not preſent, the Election is void; and ſo any other Act without the Mayor. 21 Ed. 4. 27.

If the Commonalty in the Vacancy of a Mayor make Obligation under their Common Seal, it is void; how much ſtronger will the Caſe be, when the whole Franchiſe is ſeized? 21 Ed. 4. 69.

I have now removed the Objections which lay in my way, by opening the Nature and Effect of Seizures of Liberties into the Kings hands, and where Judgment of Seizure, and whereof Ouſter are properly given.

Whereby it may appear, That this ſpecial Capias of Capias in manus Regis, is as proper an Execution againſt the Body Politick, as the common Capias againſt the Body Natural: And in Judgment of Law, the Politick Perſon is as properly ſaid Civiliter mortua by Judgment of Seizure, as the Natural Perſon is ſaid Civiliter mortua by Judgment of any Attainder for any Capital Offence.

Mr. Recorder acknowledges; That in Caſe of Natural Perſons, when the Law gives Forfeiture of the Body, or of the Liberty of the Body,

it

it is all one in Judgment of Law: The Law is the ſame when it ſpeaks of Bodies Politick, to forfeit the Liberty of the Body Politick, and to forfeit the Body Politick.

My Way thus cleared, I will lay down the Grounds and Reaſons of Law, upon which I conceive with ſome clearneſs, That Corporations may be Forfeited and Seized into the Kings Hands, as well as Offices or any other Liberties whatſoever; and then ſhall inſtance in ſome further Precedents, whereby it will appear, they have ben Forfeited and Seized.

My Grounds are principally Two:

1. That there is a Condition in Law annexed to the Franchiſe of a Corporation upon its firſt Erection, as ſtrong, if not ſtronger than to any other Franchiſe or Liberty whatſoever.
2. That there is nothing extraordinary or peculiar in the Nature of a Corporation, to hinder taking advantage of the Condition broken, or to exempt it from the common Condition of other Liberties in Conſideration of Law.

As to the firſt:

Whereever the Law introduceth or alloweth any Right upon a Truſt, or for the Benefit of the Publick, it implies a Condition, That the Truſt be diſcharged, and the Ends of its Creation complied with.

This Condition implyed by Law, is of ſtricter Obligation than Conditions expreſs.

8 Co. 44. It ſhall bind Infants and Femes Covert, 8 Co. 44. The principal Caſe is of Offices; but the Book ſaith, So it is of all Liberties and Franchiſes.

And indeed throughout our Books, The Caſes of Offices of Publick Truſts and Franchiſes run parallel.

And the greater the Truſt is, or of greater Neceſſity to be perform'd, the Condition is ſtill the ſtricter.

And therefore in Franchiſes, as well as Liberties, if the Franchiſe be for the better Adminiſtration of Juſtice, and of Neceſſity, Non-uſer will be adjudged a breach of Condition: But where not of Neceſſity, bare Non-uſer will not be a breach; yet Refuſer, which is an obſtinate and wilful Non-uſer, may be a breach. But in caſe of all Liberties and Franchiſes whatſoever, Abuſer was ever judged a breach of the Condition.

9 Co. 50. This Matter, upon the Queſtion of Forfeiture of an Office, is well ſtated in the Counteſs of Shrewsburies Caſe, 9. Co. 50.

Now this Franchiſe of a Corporation is granted upon a far greater Truſt and Confidence, than any other Liberty whatſoever, as I have already ſhewn; viz. For the Government and Peace of the Inhabitants, and others coming within the Liberty of the Franchiſe, in ſubordination to the general Government of the King: And that they are intruſted therewith by the King upon the publick Account of Government only, and not for any private Reſpect or Benefit whatſoever.

Other Franchiſes are either ſubordinate and auxiliary to this, as to hold Courts, have Gaols, and ſuch like; for the better Adminiſtration of the ſeveral parts of Government.

Or elſe are of Profit or Eaſe, Pro meliori ſuſtentatione of the Charge and Burden of this Subordinate Government.

1 Palmer 495. And therefore Banks in the Argument of Hayward and Fulcher's Caſe, Palmer 495. calls it the Principal Liberty; and other Liberties, the Acceſſories.

Inſt. 432. In the Caſe of Knights-Templers, the Corporation was diſſolved upon the account of Non-uſer, though without their Default; but the End of their Inſtitution ceaſed.

The Caſe is much ſtronger where it is a voluntary Ceſſer, as where the Abbots and Monks put off their Habit, and leave their Houſes.

This

This Non-uſer will be a good Cauſe of diſcharging the Order.

Where the Commonalty have power to Chooſe every year a Mayor, and if they do not Chooſe a Mayor their Franchiſe ſhall be forfeited. or they may be Fined, upon this Reaſon, That common Juſtice fails for want of ſuch an Officer; which was a breach of the Condition annexed to their Liberty by Non-uſer, 21 E 4.14. 21 Edw. 4. 14.

It appears by this Caſe, That the Commonalty in the Vacancy of a Mayor, are to this purpoſe a Corporation, to Chooſe a Mayor to perfect the Body; and 'tis the only Corporate Act that they are by Law enabled to do without a Mayor; and this Right may be forfeited too.

And as by never chooſing a Mayor, they themſelves would diſſolve the Corporation; ſo by forfeiting their Right, it is in the Power of the Law to diſſolve them.

It alſo appears expreſly by this Caſe, That the King may proceed either for a Fine, or upon a Forfeiture, as he may do in the caſes of all Offices and Franchiſes whatſoever, as he ſhall be adviſed.

If Non-uſer in ſome caſes (as I have ſhewn) will forfeit a Corporate Right, no ſhadow of Reaſon can be offered, why Miſuſer or Abuſer, will not do it as well as in all other Liberties.

For as greater the Truſt, or ſtronger the Condition; ſo an Abuſer of that Truſt is a far greater breach of the Condition, than a ſimple Non-uſer.

Single Bodies Politick have indiſputably ſuch Conditions annexed to them upon the Truſt of their Creation; and the breach of the Condition is in Law good cauſe of ſeparating the Politick Perſon from the Natural, by Deprivation, which in the Civil Law, is of the ſame effect as Judgment of Ouſter by the Common Law; and their Suſpenſion hath ſome reſemblance with our Seizures into the Kings Hands.

If Mr. Recorder had but obſerved the different Laws that Spiritual Corporations and Civil Corporations are guided by, he would not have raiſed his Wonder to that height, That Quo Warranto's were never brought againſt Monaſteries, Biſhops, Deans and Chapters, Parſons and Vicars; and that bringing it now againſt the City of London, threatned the whole Hierarchy of the Church.

When (with his leave) All theſe, if they offend, may by Law loſe their Corporate Right, which may be ſevered from them by a certain Inſtrument called Deprivation, the Edge of which is no ſharper than Judgment of Seizure, or Ouſter in our Law.

And certainly the Union between the Politick and Natural Body, is as cloſe and as ſtrong in ſingle Corporations, as in aggregate.

And the ſame Authors have beſtowed upon them the ſame Epithet, and that they cannot commit Treaſon and Felony: And the Body Corporate of the Biſhop, Parſon, Prior, Alien, &c. is as inviſible, immortal, and as Politick as that of Aggregate Bodies.

Yet not only Treaſon and Felony, but far leſs Miſdemeanors committed by the Natural Perſons, will forfeit the Corporate Right, and amount to a Breach of the Condition annexed by Law.

So little Crimes as Waſte, and wilful Dilapidations, will be cauſes of Forfeiture: Many of the Caſes thereof are put in Sir James Bag's Caſe, to which I refer. 11 Co. 98. 11 Co. 91.

For I do take that Caſe to be an expreſs Judgment in Point, That there is a Condition annexed by Law to every Corporation, and that the breach thereof is a Forfeiture.

The Reſolution there is, That any Member of the Body may forfeit his Corporate Right, and may by Law be diveſted of it; which Right is there called, his Freedom and Liberty.

And it is the ſame Right or Liberty in which all Jointly conſidered have an Inheritance, wherein each Member hath a Freehold; for they

are not seized of this Right in their Corporate Capacity, but as natural persons, the question being of that Right which gives them the Corporate Capacity.

And what any Member may forfeit, every Member may; And the same Acts which will forfeit the Right of every Member separately considered, if done Joyntly by all the Members, will have the same effect.

What Act will amount to a forfeiture, that Case generally determins, whatsoever is contrary to the Duty and Trust of a Member; especially if the fact be contrary to his Oath? The Oath of Allegiance by the Statute 7 Jac. cap. 6. is made a part of the Freemans Oath.

The Case goes further and Assigns many Particulars, which will be Breaches of the Condition, viz. Attainders, Forgery, Perjury, Conspiracy, or any other Infamous Crimes at the Kings Suit; If these will be sufficient Cause, there can be no doubt but Treasons, Felonies and Oppressions, Seditions and other Attempts, in disturbing the Government will be good Causes of Disfranchisment, of any or many of the Members who commit such Crimes.

And this upon the Trust and Condition implied by Law, upon the First Erection of the Corporation: for the present Members are under no other Trust or Condition as to this matter, than what the Law imposed upon the first Members.

I cannot see how the Counsel for the City can evade the force of Sir James Baggs Case, unless it be by a Distinction or two.

1. First, Between every Man, and all Men; Every Man may forfeit his part, but all Men cannot forfeit the whole: Just such another distinction as was made to all the Precedents between Seizures and Forfeitures.
2. The other distinction seems to have a little more Colour, and it is between the King and the Corporation.

Ob. The Corporation are intrusted by Law with power over their Members to remove them for acting against their Duty, but the King cannot Disfranchise any particular Member; and if he cannot Disfranchise any one Member, much less can he all Members, or seize their Liberties into his Hands, which in Law amounts to a Disfranchisement of all the Members.

Resp. I Answer, The King may do both the one and the other, and in saying the King can do it, I mean in course of Law.

1. The King doth it, when the Subordinate Ministers and Governers within the Corporation do it; for they do it as his Ministers in Execution of his Laws, and tis their Duty to do it, according to the Trust he hath reposed in them, and the power he gave them.

And this Authority is greater or lesser as he is pleased to grant it, as appears by Sir James Baggs Case.

If the King grant them express Authority to remove, they may remove the offender before Conviction at Law.

But if no express power be granted, a Conviction at Law must be first had; And the Judgment of the Law directs their Duty, and they are accomptable herein to the King in his Courts of Law; If they mistake the Law and displace a Member convicted of an offence, which amounts not to a Forfeiture, the party shall be restored by Mandamus.

An excellent Precedent of Restitution, if they do not their Duty, to Disfranchise where the offence requires it.

Dier 333. 2. The King may do it by commanding them to do it by his Writ out of the Court, where the Condition remains, or out of the Chancery, as he may the Coroner of the County, Mayor and other Officers, as the Precedents have been.

13 Co. A Writ to remove the Mayor of Berwick.

So

So where an Alderman is dead, The King may ſend his Mandamus to chooſe another, as done in the Caſe of Lanceſton, P. 8. Car. 1. 23. R. Hale Corporat. Pl. 5. 9 Car. 1. Memb. 29.

If they yield not obedience, they may be Fined, or may incur the Forfeiture of their Liberties, as the Caſe may require. P. 3. Car. 1.

3. In Caſe the Corporation cannot do Juſtice in puniſhing and diſplacing the offenders, either becauſe the Majority are offenders, or favouring, or abetting the offenders, there being a failer of Juſtice in the Franchiſe which the Law will not permit, By Judgment of Law the the City or Ville, ſhall be reſtored to the Government and Juriſdiction of the Common Law, by Seizure of the Franchiſe into the King's Hands.

4. Failer of Juſtice and the not ſuppreſſing and puniſhing of notorious Riots and Tumults, have been adjudged good Cauſes of Forfeiture of Liberties, and the Plea of Non Ability, to ſuppreſs them, diſallowed as any Cauſe of excuſe, as to the Point of Forfeitures of the Liberties, which doth and will appear by the precedents inſiſted on by Mr. Solliciter; and what I ſhall ſuperad.

So that I conceive the Authority of Sir James Baggs Caſe remains unſhaken, That there is a Condition annext to the Franchiſe of a Corporation, the Breach whereof will be a Forfeiture.

The greater the Truſt of any Member of the Corporation is, the ſtricter is the Condition; As where any of the Members are choſen into any places which more immediatly concern the good Government of the Corporation, the leſs Crime will be the cauſe of his removal than will be of Diſfranchiſement of a private Member, as in the Caſe of an Alderman.

It was reſolved, for being a Drunkard and Haunter of Taverns, he being a Magiſtrate more immediatly entruſted with the Government was cauſe of removal; though he have Freehold in the place, yet it is upon ſpecial Truſt and Confidence. *Taylers* Caſe Trin. 14. Jac. B.R. Roll Reſtitution 455. pl. 1.

The Law will be the ſame if the Magiſtrate gives the leaſt incouragemen to Popular Tumults, or frequent Conventicles, and unlawful Aſſemblies.

And tis no Objection to ſay, that ſome Statute Laws have laid a penalty for the offences, as it is in the caſe of Drunkenneſs, and many offences of Officers; and in Common Law offences the Law provides a penalty againſt the offender by Fine or Impriſonment, and yet the ſame offence if a Breach of Condition, will be cauſe of Diſfranchiſement, as appears in Sir James Baggs Caſe.

The penalties inflicted by Statutes or Common Law, are for the Breaches of particular Laws; but the diſplacing of a Magiſtrate is for Breach of the general Truſt of his place, wherewith he is intruſted for the publick; and having broken that Truſt and Condition, the Law Adjudgeth him unfit to be intruſted, ne quicquam detrimenti capiat Reſpublica.

The Queſtion, What Acts of a Member will forfeit his Corporate Right, is no where in our Books ſo diſtinctly put as in Sir James Baggs Caſe. But the Queſtion, what Acts of the Members, and of what number of the Members will forfeit the whole Franchiſe, I know no where diſtinctly put in our Books, but as they lie ſcattered in the Inſtances of Forfeitures taken, and Franchiſes Seized; otherwiſe than upon the general Rules of non uſer & abuſer of the Truſt commited to them.

But the Civilians do largly treat upon theſe Queſtions; Whether the Cities, Colledges and Univerſities may be Forfeited and diſſolved, and what Acts of the Members will be cauſes of ſuch Forfeitures.

And therefore I crave leave before I conclude this Head, from the Condition annexed by Law to all Corporations, only to mention one of them.

It

Oldradus de Pont. fol. 29.

It is Oldradus de Ponte, in his Book entituled, Conſilia ſive Reſponſa, & Aureæ Quæſtiones.

Where he debates the Point at large Pro and Con, and puts the Objections of ſome Authors, which are much the ſame Enthuſiaſtick Raptures as have been made uſe of in this Caſe; viz. That they have no Souls, but are Immortal Bodies, and ſuch like ſtuff. But he reſolves the Queſtion thus; I will repeat his own Words,

Sed licet non habent veram perſonam, tamen habent perſonam fictam fictione Juris. Et ideo dicit Lex, quod Municipium Curiæ & Societatem perſonæ ſuſtinent; Et ſic eadem fictione animam habent, & delinquere poſſunt & puniri, eâ tamen pœna quæ poſſit cadere in eas, ſcilicet, quod privetur Privilegiis, & ſic Capite minuitur. Et ſic ſicut vera perſona per mortem Naturalem deſinit eſſe quod erat, ſic iſta perſona ficta per mortem Civilem, quæ eſt, ut privetur Privilegiis, deſinit eſſe quod erat, quia amodo non erit Univerſitas.

And then aſſigns the Cauſes generally:

Et quod Privilegia poſſint revocari cum incipiunt eſſe iniqua vel damnoſa.

Et non poteſt eſſe magis iniquum, ſi utatur eo in contumeliam concedentis.

Though this be a full Opinion of a Learned Man, as to the Caſe in queſtion, both as to the general Queſtion of Forfeiture and the particular breaches aſſign'd; yet I uſe it not as an Authority; but only to ſhew the concordance of other Laws with the Law and Practice within this Kingdom.

And that Learned Men have before now not only dreamt of ſuch a thing; but have concluded the Point upon Debate and Reaſon of Law, That Corporations may be forfeited and diſſolved, when their Privileges, as uſed by the Members, Incipiunt eſſe iniqua vel damnoſa.

Secondly, My other Ground is,

That there is nothing extraordinary or particular in the Nature of Corporations aggregate, to exempt them from the Condition of ſingle Corporations, or of other Liberties: If there be, it hath not yet been ſhewn.

It muſt ariſe either from the Number of the Perſons who take, and are the Subjects of this Liberty, becauſe they are many; or from the Right conferred upon them.

The Number of the Perſons conſtituting this Body, contributes nothing towards the Indiſſolubility thereof, pleaded for.

They were ſeveral Natural Perſons before the Union, and remain ſo many Natural Perſons; and by retaining their Natural Capacities, are as capable of being ſeparated, as they were before capable to be united by taking this Right,

And as to the Number of the Perſons, a Corporation differs nothing from other Communities, which may aſſemble and act in a Body: As the voluntary Societies in Inns of Court and Chancery; and Armies which act under Commiſſions, to ſome Perſons to collect and aſſemble, others to act jointly under them.

Theſe Societies have their peculiar Rules and Laws to act by, and act jointly and in a Body as Corporations do: But yet in the one caſe, if the Members ſo agree; or in the other caſe, the Commiſſion be revoked, they are all ſeparated, and the Union diſſolved.

So as to the Nature or Numbers of the Perſons collected, a Corporation differs nothing from other Societies not Incorporated.

From Number may be preſumed a greater duration, that 'tis more probable many out-live one; but 'tis certain that many ſhall die as one Man, and probable that all may die before others elected, which was admitted to be a diſſolution of the Body Politick; but ingeniouſly diſtinguiſh'd, That this was rather a Separation of the Perſons from the Body, than of the Politick Body from the perſons.

Be

Be it ſo, it is admitted then they are ſeparable, and that Number cannot protect the Natural Perſons from being ſevered from the Body Politick by Natural death.

And I have already ſhewn, That Number contributes nothing to the Indiſſolubility of a Corporation, by ſeparation of the Members one from the other, which is called a Civil death; and in caſes of Civil death, the ſeparating the Liberty from the Perſon, or the Perſons from the Liberty, is all one.

To take the Office from the Officer, or remove the Officer from the Office, is all one; and ſo in Diſfranchiſements, to take away the Freedom of a Member, or to remove him from his Freedom, is all one: And ſo in forfeiture of Franchiſes, the Judgment of Ouſter is formally puting the Perſons from the Franchiſe, and Judgment of Seizure taking the Franchiſe from the Perſons; but in effect they are the ſame, viz. a Separation betwæn the Perſons and the Franchiſe. And this Separation being wrought by a Condition in Law annex'd upon the Union, the Number of Perſons can no more prevent it, than where Lands or Incorporate Inheritances are granted to many and their Heirs upon an expreſs Condition: That no advantage could be taken of the Condition broken, becauſe the Grant is to many Men.

Secondly, From the Nature of the Right or Franchiſe, as little can be infer'd for this Inſeparable Union pretended.

Firſt, In its Creation, it is mærly by the Policy of Man, and the Rule is taken in Calvin's Caſe, 7 Co. fo. 25. That what is by the Law of Man, may be altered. And divers other Books ſpeaking of the effects of human Conſtitutions, laying down as a certain Rule, Quicquid colligitur, diſſolvi poteſt; Mortal Beings cannot confer Immortality.

All Rights whatſoever are Incorporate, and ſometimes Abuſivè are ſtyled Immortal, which by intendment of Law is only, That they have continuance ſo long as any perſons ſubſiſt capable of having them: And in this ſenſe the right to Lands and Corporate Inheritances are of greater duration than many Liberties, and particularly thoſe of Corporations; becauſe they ſubſiſt when they return to the Crown, which many Liberties do not, but are then extinct. Strata Mercella, 9 Co. & 15 Edw. 4. fo. 6.

Secondly, As to the Nature of this Right, whether it be conſidered as a Right of taking and holding in another capacity than that of Natural Perſons: Or, as a Right of taking in Succeſſion: Under neither Conſiderations can it import any inſeparable quality.

In the former, It is both the ſame with that of ſingle Corporations, and plainly implies a Truſt.

In all the Caſes of our Law, wherever any perſons take in anothers Capacity than their own, it is always upon Truſt, as Executors or Adminiſtrators, Churchwardens, &c. and all ſingle Corporations: And where the Law creates the Truſt, the Law provides remedy, if the Truſt be broken, for putting the Truſt into safer hands.

And likewiſe, if conſidered, as a Right framed by Policy to take in Succeſſion, it is in ſubſtance the very ſame with that of ſingle Corporations; and if any advantage be in point of Duration, it inclines to the ſide of ſingle Corporations, as better framed by Policy to have continuance, than the other of aggregate Corporations.

1. Becauſe the Choice of the Succeſſions, whether Elective, Donative, or Preſentative, is placed elſewhere, and not in the Perſon himſelf, that it cannot be in his power to prevent the Succeſſion.

2. Becauſe the Law leaves it not in his power to determine the Corporation, either by Surrender or Forfeiture, but during his life, and ſo cannot prejudice his Succeſſion.

But in Lay Corporations the Power of Succession being entrusted with them by Elections to continue it, the whole Right is in them, and consequently in their power to determine it, either by not Electing, or electing those the Law incapacitates; which is the Case of Worcester; Or every Man of them may for good cause be Disfranchised, or the Franchise for Cause seized, and consequently for want of Succession, fail.

Besides, to go in Succession doth not necessarily imply a Perpetuity: Goods may go in Succession, as to Churchwardens.

A Chattle Lease may go in Succession.

The King grants Lands for years, rendring Rent to the Aldermen of Chesterfield; they take in possession as a Corporation, Cro. Eliz. 35. The same Case, Hales, Corporation pl. 25.

Mich. 26 Eliz. 1 Cro. 35.

Upon these Grounds, that there is a Condition annext to all Corporations, as well as other Liberties; and that there is nothing peculiar in the Nature of Corporations aggregate, to exempt them from being liable to Seizure for Breaches of that Condition, I conclude, Corporations may be taken into the Kings Hands by Seizure, which is a Separation of the Liberty of being a Body Politick from the Natural Persons, who (as Bracton phraseth it) were but Usu-fructuarii, and had not Absolutum Dominium.

And by this Separation, the Natural persons are only restored to the Government of the Common Law.

The Mischiefs that would inevitably follow, were the Law otherwise, have been insisted on by Mr. Solicitor.

It were to set up Independent Common-Wealths within the King-dom; and according to the Judgment of the Parliament, 21 Ed. 3. would certainly tend to the utter overthrow of the Common Law and the Crown too: In which all Soveraign Power to do right both to its self and the Subjects, is only lodged by the Common Law of this Realm.

17 Ed. 3. pl. 17.

The Answer Mr. Recorder applied to the Mischiefs, That they may be otherwise Punished, is of little avail.

Though he did not express in what manner they might be punished, yet it must be intended by Fine, or at the Suit of the Persons injured by their Oppressions.

The same Answer may be applied to the Oppressions by Officers, and the Abuses of all Liberties whatsoever, and likewise to Excuse the Disfranchisement of any one Member of a Corporation: But that is no sufficient Remedy to cure the Mischiefs; whilst the Cause still remains, and in as great Power to oppress, as before; which nothing can sufficiently restrain, but the loss, at least the fear of the loss of that Power.

To put the Subjects grieved, to contend with Corporations for their Relief by their several Actions, were for the Common Law to lay a greater Burden upon them, than what they suffered from the Corporation, as was sufficiently experimented in the Case of the Duty of Water-Bailiage of London, before the Quo Warranto was brought to relieve them: And if they recover Damages, those Damages can only be levied upon the common Goods and Estate of the Corporation, 8 H. 6. 1.

8 H. 6. 1. 19 H. 6. 64. 9 H. 6. 36. Fitzh. Ex. 128.

And many Corporations have little or nothing in Common Stock, and few Corporations sufficient to make Satisfaction for all their Oppressions.

And to prosecute for a Fine is no satisfaction to those who are injured, nor doth remove the Cause of the Oppression.

And the Law would be very deficient if such inferiour Jurisdictions, or Corporations, were not subject to the Common Law upon the like Conditions as other Liberties, Franchises, and inferiour Jurisdictions are.

Mr. Recorder

Mr. Recorder hath affirmed it with great assurance, That never any, till this Suit, ever so much as thought of resuming Corporations, which are subordinate Governments.

I shall only request of him, and of the other Gentlemen of the Cities Council, to shew me the Opinion of one Learned Man of this Kingdom, or any other Nation, deliberately delivered upon the Question, That Fœdatory and Subordinate Governments cannot, for any cause whatsoever, be Forfeited or resumed. That de facto they have been resumed in other Nations is testified by many Authors, with their Opinions, that de Jure they may so be; which I forbear to trouble the Court with.

Within this Kingdom of that Nature are Counties Palatine, the Cinque Ports, the Liberties of *Ely*, Lordships Marchers, and such like; and the Corporations of Cities and Towns, which are all held of the Crown of England.

What the Practice and Judicial Opinions have been concerning these Liberties, according to the Law of this Land, Mr. Solicitor hath shewn in several Instances; which I shall not repeat, but shall produce some others to prove the same matter.

I beg leave to rescue a very considerable Precedent produced by Mr. Solicitor, from the Gloss Mr. Recorder was pleased to put upon it, That it was an Act of Parliament; when 'tis no such matter, but a Judgment of the Kings Bench in point, upon a Forfeiture.

'Tis the Case of Sandwich, cited p. 9 Ed. 1. Rot. Majus 35. Kanc. the Record is amongst the Plea Rolls, in the Treasury or Tally-Office.

It was upon an Information at the Kings Suit, presented by the Sheriff of the County against the Mayor of Sandwich and Three others, for Assaulting the Sheriffs Bayliff upon execution of the Kings Writ within Stanore, Beating the Officer, and taking the Writ from him and tearing it, and stamping it under his Feet.

They plead to the Jurisdiction, That Stanore was within the Liberty of Sandwich, within the Cinque Ports; and that De aliqua seductione fact' corporis Regis, non tenentur respondere alibi, than at the Court at Shepway.

The Plea was over-rul'd upon this ground, That none could claim such a Liberty without express Grant; and they shew no Charter for it, and was ruled to Answer over. They insist upon that Exemption, and refuse to give any farther Answer; whereupon Judgment was given, That they be committed to Prison: And the Judgment goes farther, Et quia *Johannes Dennis* Major' de *Sandwich* convictus est, de transgression' prædictis; Et factum Majoratus in his quæ tangunt Comitatum est factum ipsius Communitat', consideratum est, quod Communitas de *Sandwico* amitt' Libertatem suam.

This is an express Judgment of this Court upon the Forfeiture of the Liberty, for a Crime committed by the Mayor and others, in a Matter relating to the whole Liberty.

Before this, the Franchise of Sandwich was seized, as forfeited into the Kings Hands for a Notorious Riot committed by the Inhabitants, in obstruction of Justice. 3 Ed. 1

The Case upon that Record was thus: Upon an Inquisition found of Purprestures within the Kings Warren of *Dover* by stopping a Water-Course, whereby the Warren was overflown. Pasch. 3 Ed. 1. Kanc' 54. Dorso Rot. Majus.

A Writ issued from the Court of Dover, to Distrain the Offender by his Goods to amend and remove the Purpresture: The Officer Distrains the Cartel of Simon Erchesion, who was the Offender, and lived at Sandwich, within the Cinque Port. Some of the Men of Sandwich make Rescous; and when the Constable of Dover sent Messengers, to complain to the Mayor of Sandwich of this Rescous, and to require Redress; after the Complaint made, and no Redress had, several of the Men of Sandwich fell upon the Messenger and several beat them. Then the Constable sent more Officers to see Right done, against whom the Town was Barricaded and Chained, and his Officers kept out by the Townsmen in Hostile manner. Then

Then the Constable went in person, and after some time suppressed the Tumult, and upon their submission, the Commonalty prayed the Constable would deliver their Submission to the King, which they then delivered to him under their Common Seal; and accordingly was delivered by the Constable to the King and Councel, and adjourned into Parliament.

And the Mayor Bayliffs and Commonalty ordered to be there at a certain day, before the King and his Councel in Parliament. Upon hearing thereof in the presence of the Mayor and Bayliffs for the whole Commonalty, Judgment is thus entred upon that Record.

Consideratum fuit per Dominum Regem & consilium suum in Parliamento, quod Majoritas & Libertas de *Sandwich* pro prædict. Transgressionibus in manus Regis Capiatur & tradatur in custodia Constabulario de Dover, ad disponendum de prædict. Villa Secundum communem Legem & Consuetudinem Regni, non obstante aliqua libertate.

It evidently appears both by the form and matter of it, that that form was Judicial and not Legislative, and agreeable to the forms of Judgment, in the other Common Law Courts, and in our Law Books.

Here is a Jugment only of seizure upon a Forfeiture, yet it amounted to a real ouster; for the Town was actually devested of the Liberty, and delivered up to the Government of the Common Law.

For Capiatur Majoritas & libertas de Sandwich in the singular number, in Manus Regis: tradatur in Custodia Constabulario suo, who is the Common Law Officer, within the Cingue Ports; and is no more than leaving the Town to the Government of the Common Law; which is fuller explained by the subsequent Words of disponendum de villa secundum Legem & consuetudinem Regni. And it appears by this Record, that there is a difference between the Liberty and the Ville, though sometimes Ville is used for the Liberty of the Ville; but here the Mayoralty and the Liberty are seized, and the Ville delivered over to the Common Law Officer.

The next Precedent I insist upon is that recited by Mr. Recorder, the Case of the Town of Cambridge, but lamentably defaced by my Lord Cokes Marginal Note, and Mr. Recorder's averrment, that by the Record it appears to have been by Common Consent of Parliament. I rather insist upon this, for that Mr. Recorder hath acknowledged its force, that it wrought upon the Corporate Right, and was a upon a Forfeiture, but lays the force of it in its being an Act of Parliament.

When in truth it is a Plain Judgment of a Court of Law, and it appears by the Record it was no Act of Parliament.

R. 2. N. 45. to 66.

Mr. Recorder cited the Record, 8 R. 2. No. 11. 4. Inst. 228. and 'tis probable Mr. Recorder lookt no further than that Book for it: In the Margent it is so cited, but miscited; yet in the Body of the Book, in putting the Case it is truly cited; for the Record is, 5 R. 2. 45. to 66. and it is evident by the Marginal Note, and my Lord Cookes saying it was the common consent, misguided Mr. Recorder, to affirm it to be an Act of Parliament; when the contrary appears by the Record.

The complaint to the King and his Counsel in Parliament against the Town of Cambridge, was for a great Riot committed, and an Assault upon the University; and the fact in substance is the same as related in the fourth Institutes.

It was prosecuted at two Suits, the one against the late Mayor and Bayliffs, who were at the time of the Riot in their natural capacity; The other against the Mayor, Baliffs and Commonalty in their Corporate Capacity; The Writs returnable coram nobis & concilio nostro.

The former Mayor and Bayliffs appear, and plead in their natural Capacity, that they were neither assenting nor aiding to the Riot; neither did or said any thing, that might turn to the damage of the University, unless only by Coaction and Outragious Compulsion: And there seems to have been no further proceedings in that Suit.

Upon

Upon the other Writ the Mayor, Bayliffs and Commonalty appear and pray they may have a Copy of the Articles, which were read to them, and Council allowed to them, and time to anſwer, and ſuch anſwer was returned as is mentioned in the 4th Inſt.

But in the Record, it is ſaid it was anſwered by the Court, and that the Court told them that at preſent they ſhould not be put to anſwer to the Crime, (which muſt be in order to a Fine) but only touching their Liberties.

Then touching their Liberties, they put in a Plea by their Council, to the juriſdiction of the Court, which is omitted in my Lord Cooke; only he ſaith after many dilatorie ſhifts and ſubterfuges following therein, the Court overrul'd the Plea to the juriſdiction, and rul'd them to anſwer in chief, and if not, Judgment ſhould be entred by Nihil Dicit. Cottons Records.

They then pleaded a frivolous Plea, partly not Guilty, partly in excuſe; and the Kings Serjeant replied, and the Plea held naught. Thereupon they ſubmitted as to the Franchiſe to the Kings Grace, ſaying that it might be no concluſion to them, if they ſhould be called in queſtion for the Crime.

Whereupon Judgment of ſeizure was only given. The Words of the Record ſay thus,

Noſtre Seignior le Roy de Aſſent des Prelates & Seigneurs en ceſt Parliament fiſt ſeiſer la dit Franchiſe en ſa maine come forfeit pur la ditz Cauſes.

Throughout the Record it appears by all the proceedings they were Judicial, but the Plea to the Juriſdiction of the Court, and the Judgment by the King and Lords, only are demonſtrations it was no Act of Parliament, nor adjudged by the Legiſlative power, but by a Court of Law.

It appears upon the ſame Record, that the King granted ſeveral of the particulars which were ſeized to the Univerſity, who enjoy them to this day.

Et la Remnante de la Franchiſe de la dit Ville the King granted to the Mayor and Bayliffs, to hold of him and his Heirs, at the ancient Rent of 101. Marks.

33. Ed. 1. The Liberty of the City of Wincheſter, ſeized into the Kings Hands by Judgment of the King and Lords, for ſuffering a Hoſtage of Baion, who was committed to their charge by the King for ſafe cuſtody, to eſcape, to the Kings great Damage. Plac. Parliam. 277.

The Writ of ſeizure is directed to the Sheriff of the County, quod prædict. Civitatem Wintoniæ & Libertatem ejuſdem Civitatis, cum omnibus ad eas tangentibus ſine dilatione Capiat in manum Regis, & eas ſalvo Cuſtodiat, donec Rex aliud præceperit. Whereby the Franchiſe being ſeized, the Men of the City are put under the Government of the Common Law Officer.

Afterwards the City Compounded with the King for 500 Marks, and then the King reddidit eiſdem Majori & Civibus Civitat. & Libertat. prædict. habend. & tenendum in forma qua eas tenuerunt ante Captionem earundem in Manus Regis, and Letters Patents of reſtitution granted, and a Writ of reſtitution directed to the Sheriff.

Theſe were Judgments by the King and Lords in Parliament, upon Forfeitures, and were Judgments of ſeizure only, according to the ſetled rule and practice in the Common Law Courts.

Mich. 18. Ed. 3. Rot. 161. B. R. in the Treaſury or Tally Office.

A Judgment of the Kings Bench, againſt the Town of Ipſwich, upon a Forfeiture.

The Bayliffs of Ipſwich are Impleadred by the King, upon a ſpecial Information, reciting that in the Kings Bench, ſitting there, ſeveral Malefactors were Indicted for the Death of one John Holtby, and that many of the ſaid Town, tam de Majoribus quam de Mediocribus, did comfort and incourage the Felons after the Felony committed, and treated and entertained them with Viands and great Joy.

And after the departure of the Juſtices kept a mock Court publickly, and Summoned the Juſtices and the Officers of the Court, to appear under ſeveral Pains.

To which the Bayliffs appeared and oppoſed by the Court, why they did not Attach and ſtay the Malefactors; they anſwered, the Malefactors flew to ſanctuary: Being further oppoſed, that they did not attach thoſe of the Town, that furniſhed the Malefactors with Eſculenta & Poculenta; They plead quod non Auſi fuerunt, eo quod tanta fuit Multitudo gaudentium, & plures eorum fuere è parentela Malefactorum: Whereupon Judgment was given contra Balivos & Communitat. quod Caſtodia ejuſdem Villæ ſeiſiatur in Manus Regis, & quod aliquis ex parte Domini Regis qui ſit auſus ad pacem Domini Regis manutenendam ſe intromittat in eadem Villa quouſque Dominus Rex aliud inde dixerit,

Which the Record ſhews, is the Bayliff of the County, the Common Law Officer.

And the Mayor and Bayliffs in open Court, ſurrendred their Staffs of Office.

This Judgment is agreeable to thoſe in Parliament, and of ſeizure only.

R. Clauſ. 7 John Memb. 24. R. Clauſ. 7. Johan' Memb. 24. Civitas & Libertas Norwici ſeized into the Kings Hands, for hanging Approvers without the Licence of the King or his Juſtices; And the Major ſummoned to anſwer for the damage done to the King.

13 Ed. 1. Rot. Fin' Memb. 10. The Liberties of Norwich ſeized for a great Riot, and Burning the Church; The Caſe is mentioned Roll. prerogative, fol. 204.

21 H. 6. The Liberties of Norwich were again Seized, 21 H. 6. upon a Preſentment of a great Riot taken before Forteſcue, and afterward regranted to them, 27 H. 6. Pat. Roll. Memb. 19.

Cr. Car. 252. The Caſe is cited by Mr. Noy, in the Caſe of the City of London, concerning the Death of Dr. Lamb, Cro. Car. 252.

The Liberties of Oxford were ſeized, 32 H. 3. for a great Riot committed by the Towns-Men, when the Kings Brother was there, and killing of his Brothers Baker.

32 H. 3. Memb. 18. The Writ to the Sheriff runs thus, Quod capiat in manus Regis villam de Oxon, et eam ſalvam Cuſtodiat ad opus Regis, Ita quod Major et homines ejuſdem Nullam inde habeant adminiſtrationem; The King in the ſame year Pardons them, and grants them reſtitution, and a Writ to the Sheriff to put them into poſſeſſion, 32 H. 3. Memb. 13. Hal. Lib. L. f. 326.

32 H. 3. M. 13. Again the Liberties of Oxford were ſeized 29 Ed. 3. and part of their Liberties granted to the Univerſity, which are enjoyed by them to this day, and the reſidue reſtored to the Town; the ſeizure was for a Riot committed, Rot. Clauſ. 29 Ed. 3. M. 21.

Rot. Cl. 29. Ed. 3. Memb. 21 20 H. 3. The Liberties of Eveſham, for uſing falſe Meaſures when the King was there, and afterwards upon ſubmiſſion of the Abbots and Monks, the King maks reſtitution to them, R. Cl. 20. H. 3. M. 8.

18 Ed. 1. The Town of Southampton was ſeized into the Kings Hands, for wounding even to Death an Officer in ſerving the Kings Writs, they after ſubmitted to a Fine, and took a new Grant, and raiſed their fee Farm rent to 20 l. per ann. Roll. Prerog. fo. 204.

It would be too great a trouble to the Court, to cite more Precedents of ſeizures for Forfeitures.

In all theſe Inſtances reſtitution was never made by the Court but by the ſpecial Grace of the King, after ſubmiſſion to him, and upon ſuch Terms as he was pleaſed to accept; and in ſome Caſes was pleaſed to reſtore them to the whole; in other Caſes, but to the part of the Liberties.

That this Liberty of being a Body Politick, may be ſeized into the Kings Hands by Quo Warranto, Mr. Recorder in effect hath admitted it, if the Suit be brought againſt particular Members, and the Caſes produced by him prove it. For in the Caſe of Cuſack, the Curia adviſare vult

vult was upon that very Point of being a Body Politick: And the Caſe of the Virginia Company, the very liberty of being a Body Politick, is by the Judgment ſeized into the Kings Hands.

I will give ſome Inſtances where it hath been done, in Caſes of *Quo Warranto*, againſt them by the Incorporate Name.

Fitzh. Avowry 129. In the Iter of Lancaſter, a Quo Warranto againſt the Bailiffs and Commonalty of Lancaſter; They appear, and claim by a Charter of King John, whereby the King grants to them all ſuch Franchiſes which the Burrough of Northampton had; but do not ſet forth upon Record what Franchiſes Northampton had, nor do make Title to the Franchiſe by Preſcription. And for that Reaſon Judgment was given, that their Franchiſe be ſeized into the Kings Hands, as forfeited. Fitzh. Avowry 129.

In the Caſe I before cited, A Quo Warranto againſt the Bailiffs and Aldermen of New Radnor, and Judgment againſt them by Default, that the Liberty ſhould be taken and ſeiz'd into the Kings Hands, tho' afterwards it was reverſed, becauſe in miſericordia was entred inſtead of a Capiatur pro fine; yet it is a Judgment in Point, That a Corporation might be forfeited and ſeized by Default in pleading. B. R. Mich. 20 Jac. Rot. 17.

The Caſe of New-Malton, Trin. 6 Jac. is an expreſs Authority, that this Liberty may be ſeized by Judgment in a Quo Warranto againſt the Inhabitants of a Town by their Corporate Name. 'Tis brought againſt the Bailiffs and Burgeſſes of New Malton, and the Form of the Information is the very ſame with this againſt the City of London. Trin. 6 Jac. R. 3.

They plead by their Corporate Name, and Entitle themſelves to the Liberty by Preſcription; and Verdict and Judgment againſt them by their Corporate Name of Seizure only, that the Liberty be taken and ſeized into the Kings Hands; and which is more, the Capiantur pro Fine againſt them, is entred againſt them by the Corporate Name of Ballivi & Burgenſes, though the Corporation by the Seizure was diſſolved; and the Reaſon no doubt was, That that general Name was a ſufficient deſcription of the Perſons who were liable to the Fine for their Uſurpation.

And no doubt can be made, but that the true Liberty may be forfeited, and loſt by inſiſting upon a Wrong Title, as well as by Default, or any other Forfeiture whatſoever. 2 H. 7. 11. b.

This Town lies under the weight of that Judgment to this day, and are no Corporation, and being oppoſed by the Intereſt of the Lord Eure, who proſecuted that Quo Warranto, did never obtain any Reſtitution nor Regrant.

A Quo Warranto againſt the Bailiffs and Burgeſſes of Berkhamſtead in Com. Hertford; they appeared, and Judgment pro defectu reſponſi given of Seizure, Paſch. 16 Car. 2. and they are no Corporation at this day. Mich. 15 Car. 2. 23. R.

In the ancient Eyres, the Juſtices in Eyre, when upon Claims put in, the Liberties were loſt, either upon ſome defect in Pleading, or for ſome ſmall Abuſer or Miſtake; The Juſtices were entruſted with the Kings Mercy, to admit to a Fine for Redemption, and make Reſtitution: But Judgment firſt paſſed for Seizure. And regularly upon the General Summons of Quo Warranto in Eyre, or ſpecial Suit of Quo Warranto, which are, and ſound in the Right, no other Judgment can be given, if for the King, but a Capias in manus, or of Ouſter; if for the Defendants, a Judgment of Allowance, or Eat ſine die.

The Capias pro Fine is collateral, and for the Uſurpation, not for the Cauſe of Forfeiture or Seizure.

It was one of the Articles of Enquiry in Eyre, how they had uſed their Liberties; if an Abuſe was found, though never ſo ſmall, Judgment of Seizure was given; though afterwards redæmed by Fine upon ſubmiſſion.

Quo

Rastal pl. 1. fol. 540.

Quo Warranto **upon a Claim of View of** Frank-Pledge **in** Eyre. **It was demanded of the Defendant,** If he had any Pillory or Tumbrel; **He answered,** He had not. **Judgment was prayed on the behalf of the King;** for that amounted to a Forfeiture; and if that were not sufficient, that then it might be enquired on behalf of the King, how they had used the Liberty.

The Jury find, that the Defendants and their Ancestors had **View of** Frank-Pledge, but find that the Defendants had taken Amerciaments of Offenders against the Assize for Bread and Beer, amounting to two Shillings, in such Cases where the Offenders should have been punished by the Pillory and Tumbrel. Ideo consideratum est, quod Visus Capiatur in manus Regis.

And then they pray they may have their Liberty again upon a Fine which is granted to them upon Pledges for well using their Liberties.

And there is no difference where the Liberty is lost upon a defective Claim or Mispleading, or for a Forfeiture in Quo Warranto; the Judgment is the same of Capias in manus; and it is all one whether the Cause of Forfeiture be found by a Jury, or confessed upon the Pleadings in a Quo Warranto.

The Second Point. **The next preliminary Point which was moved, is,** Whether the Acts of Common Council be the Acts of the Corporation, and do oblige them?

It seems a strange Question, That when to assemble, consult, determine, and to make Orders and By-laws, for the Rule and Government incident to every Corporation, without special Clauses of Grant, and that herein only consists the Exercise of the Politick Reason of the whole Body, it should be doubted, Whether what they determine and resolve upon, being so jointly Assembled, be a Corporation Act, or may affect the Corporation?

Upon the Erection of all Corporations, this Power of assembling, deliberating and determining for the Corporation, is either intrusted with a few particular Members, whose continuance in that Trust (both as to the present Members and the Succession of them) is directed by the several Charters.

Or else it is intrusted with the whole Body, and that either expressly in plain Words, or by Implication of Law, when the Charters are altogether silent therein: The Law in such case lodgeth the Power of assembling, debating and determining for the Corporation in all the Members, and the Whole jointly assembled (or so many of them as upon Notice shall appear) constitute the Common-Council: And such Assembly is not styled the Common-Council from being Retained and giving of Counsel, as Mr. Recorder would have it, in which sense he only and the Common Sergeant are the Common-Council of the City; but they are so called from their Joint Assembling and Consulting for themselves, who constitute the Body Politick.

In the same sense, the Parliaments of England, by many Authorities, are called Communia Regni Consilia.

15 Ed. 4. 1. This Power thus lodged in the Whole, may be the Whole, or the Major part, which always binds the Whole, being lodged or delegated to a certain Number, which may represent the Whole.

In such case where the Power is transferred, those Members to whom it is transferred constitute the Common-Council in the same manner, and their Acts are of the same obligation as where all met, unless the Delegation were not general, but certain Cases reserved for the determination of the Whole, as hath been done in several Corporations; but in all Cases not excepted, their Acts are the Acts of the Whole Body.

Where

Where the Common-Council is conſtituted of the Whole Body, or of all the Members who will met upon Notice, there is no room left for doubt, but their Acts, and the Acts of the whole Corporation are the ſame.

Mr. Recorder ſeems the only Perſon that ever doubted it, and is not to be beaten from his holds.

1. That the Common-Council conſiſt only of Particular Members, and their Acts bind only the Members. *Et Actio non egreditur Perſonam.*
2. That no Corporation Act can be without the Common-Seal.
3. That the Acts of the Common-Council of *London* are under the Protection of the Statute or Charter in Parliament of 1 *Ed.*3. Their Acts are Perſonal, and they but Miniſters of the City; and that the Charter provides, That the Liberty of the City ſhall not be taken into the Kings Hands for any Perſonal Treſpaſs of any Miniſter of the City.

1. For the Firſt, I have already demonſtrated, That there are no Acts of the Corporation, but what are performed by the particular Members, I will not repeat. I have produced many Inſtances, That in point of Crime, the Acts of particular Members do affect the Corporation, touching their Liberty.

That they do ſo in point of Wrong, between Subject and Subject, the Caſes are infinite; I will only mention the Authorities.

9 H.6.36.b. 8 H.6. 1.a. & 14.b.

I ſhall add one Caſe more, that abſolutely deſtroys Mr. Recorders Hypotheſis upon which he relies, That a Corporation cannot do or ſuffer any Wrong; It is 48 Ed.3.17.b.

45 Ed.3.2 b. 15 Ed.4.1.b. 5 H.7.26.a. 4 H.7.13.a. 32 H.6.9.27 48 Ed.3.fo.17.b.

The Mayor and Commonalty of Lincoln bring Covenant againſt the Mayor and Commonalty of Derby, upon a Deed of Covenants made by the Predeceſſors of thoſe of Derby to the Predeceſſors of Lincoln; That thoſe of the Town of Lincoln ſhould be diſcharged from Toll, for their Merchandizes brought to Derby.

In their Count they aſſign for Breach, That two of the Burgeſſes of *Derby* by Name, did exact and take Toll of ſeveral of the Burgeſſes of *Lincoln*.

The Defendants firſt take Exception to the Count for Variance from the Writ, That the Writ ſuppoſeth and alledgeth the Breach to have been committed by the Mayor and Commonalty, and the Count aſſigns the Breach by two Burgeſſes. The Exception is over-ruled, and the Count held purſuant to the Writ for the breach of Covenant, which binds the Whole, and muſt be made by the Members.

Then it was inſiſted upon in point of Law, That the Act of the two Burgeſſes did not oblige the Corporation. It was admitted, That the Act of all the Members met together would oblige the Corporation: But it was reſolved, that it was a breach, and obliged the Corporation; and that the taking of Toll by their Officers, was a taking of Toll by the Corporation: And the Reaſon given is, That all the Members of the Corporation cannot by any common Intendment be underſtood, to met together to take Toll. Here is an expreſs Judgment, that Crimen egreditur Perſonam, and ſhall render the Corporation liable for Wrongs done to a particular Member of another Corporation.

Much ſtronger is the Caſe of the King upon breaches of the Condition in Law, as I have ſhewn, where the Acts of the particular Members committed againſt the Kings Officers, are adjudged done againſt the King, and render the Corporation liable.

But when All met together and do an Act, I may ſay, It was never yet doubted, but the Corporation was obliged.

The Caſe of VVarren, which was cited of the Place of Common-Council Man of Coventry, is nothing to this purpoſe, nor the Reaſon given that ſuch Place was collateral to a Corporation; which was no more, than that the Court could not ex officio take notice of it as a fixt Place or Office, but muſt take it upon the Return; it being variouſly uſed in ſeveral

Trin.17 Car.1. Cro.540.

Corporations, as I have shewed, and the Custom being returned to chuse and remove them ad libitum, the Court could not judge otherwise, as they may of the Freedom of any Member, which is the same in all Corporations.

And therefore in the Case of Estwick and Bret, Common-Council Men of London, where the Court could take Notice they were chosen for a time certain, the Court adjudged, they could not be removed without cause, and granted Restitution.

Trin. 23 Car. 1. Rol. Restit. pl. 8. fo. 456.

That the Members of a Corporation can be punished only in one Capacity, and not in both Capacities, and impeaching them for Treasons and Felonies in their Corporate capacities, will be Licensing them, or at least giving them an exemption and encouragement to commit these Crimes impunè in their Natural capacities, is a strain so much above Ela, that I cannot understand it.

Sir James Bagg's Case teacheth other Doctrine, That the punishing of any of the Members criminally for Infamous Offences, by Fine, Imprisonment, or Pillory, at the Kings Suit, doth not exempt the Criminal from Disfranchisement.

The many Precedents I have produced do prove, That the Rioters, or Members who committed the Cause of Forfeiture, were not discharged by proceeding against their Liberties.

In the Case of Norwich, for Hanging the Approvers, the Liberty seized for Misgovernment; and Process against the Mayor, to answer it at Westminster, Criminaliter.

And in the Case of Cambridge, the Court told them, They did not then put it upon them to answer criminally, but as to their Liberties. And they themselves knew, that by seizure of their Liberties they were not discharged of their Crime: And therefore in the Plea of Submission they insert a Saving, that it might be no conclusion to them in case they were impeached criminally.

Mr. Recorder doth admit, That if all the Members commit Treason, and be Executed, the Politick person is destroyed as well as the Natural persons, and that justly too, for so great an Offence; and therefore the extent of Forfeitures doth not encourage, but deter Offenders from commission of the Crimes.

And the Citizens, when they know that their Riots, Oppressions, and Libelling of the Government, do not only subject their Persons to punishment, who are the immediate Actors; but also subject the Constitution and Government of their City to be questioned, will look upon themselves under stricter Bonds for discharging their Duties, than common Subjects are.

And therefore the Nobility, who have so great a share in the Government, for Treasons, do not only forfeit their Lands and Lives, but their Right of Peerage, which is a special Trust for Government; and that was forfeited in Cases where their Lands were not forfeited, but only during their Lives upon the condition annex'd to that Special Trust; as before the Statute of 26 H. 8. if a Noble-man (to him and the Heirs Males of his Body) having entailed Lands, commit Treason, his Lands are not forfeited from his Heir in Tail; but the Dignity is forfeited and extinct, and not supported by the Statute of Donis, by reason of the Condition annexed, Nevil's Case, 7 Co. fo. 34.

The Law is the same, where the Dignity granted in Parliament, or by Act of Parliament, it is no less forfeitable in one Case than in the other; the Condition the Law annexed is still the same.

If when the Members of a Corporation, Corporaliter assembled, commit Treason against their Prince, which must certainly be acknowledged to be against their Duty in whatever Capacity they be considered; especially since the Statute of King James, which makes the Oath of Allegiance to be

be part of every Freemans Oath; and the Corporate Right is held of the King.

If the Law allowed no other way of taking advantage of Forfeiture of the Corporate Right, but by executing of all the Members, The Law it self might be accused of as great Tyranny as ever was practised by the greatest of Tyrants.

And to this and nothing else the Principle laid down by Mr. Recorder, that Treasons, Murders and Felonies of the Members do not affect the Corporation in Law, doth directly tend, viz. to introduce Cruelty.

The objection, that no Acts are Corporate Acts or can affect the Corporation, but what are under the Common Seal, nothing certainly can be more vain than such an assertion. Obj.

Then no Mayor, Sheriffs or other Officers ever acted legally in their Choice by the Corporation, because not under the Common Seal.

Then no By-Laws are valid as Corporate Acts, because not under the Common Seal: The same may be said by most of the Corporate Acts in Cities and Towns.

In the Case of Cambridge before the King and Lord's, Birdfeild and other Burgesses appeared on the behalf of the Commonalty, the Court demanded of them if they had Authority under the Common Seal of the Town? They answer, the Town had no Common Seal, but that they were chosen at a Common Assembly of the Town summoned for that purpose, which is the Common-Council, to appear for the Commonalty, to answer and receive ce queux la ley voet, and the Authority adjudged sufficient. 5 R. 2.

That the Common Council are but Ministers of the City, and the Liberty of the City, hath a special Protection against the personal Acts of their Ministers by the Charter in Parl. 1 E. 3. Obj.

I have a Copy of that Charter by me, from the Record's in the Tower.

The King's Grant indeed is, de assensu Prelatorum, Commitum, Baronum & totius Communitatis Regni in instanti Parliamento.

The Considerations of the Charter are pro melioratione Civitatis, and for the laudable services of the Mayor, Aldermen and Commonalty performed to the King and his Ancestors; but the Grant is only Civ. Civitatis prædict. habendum sibi & successorib. suis, The words of the Grant are, Quod pro aliqua personali transgressione vel Judicio personali alicujus ministri ejusdem Civitatis non Capiatur libertas illius in manum nostram vel heredum nostrorum, nec custos in eadem Civitate ea occasione deputetur, sed hujusmodi Minister prout qualitas transgressionis requirit puniatur. These are all the words in that Charter which refer to this matter, and the same were granted to them, in some former Charters out of Parliament.

This appears by this Charter in Parliament, that Libertas Civitatis which is the Franchise or Corporation, had been seized, and might be seized for some personal miscarriages of the Ministers; for it is meerly the Kings Grant that exempts them from it, for the time to come.

I do agree that every personal miscarriage of their Ministers was never any cause of forfeiture; but it must be miscarriages of Omission or Commission, which amounted to a Misgovernment within the Corporation. As,

30 H. 2. Rot. Cl. memb. 5. The City of London taken into the Kings Hands, for not levying a Hue and Cry upon the Death of persons who were slain, Hale Lib. L. fo. 269. Rot. Cl. 30 H. 3. memb. 5.

H. 3. memb. 2. Their Liberty seized for giving of false Judgment in the Hustings, Lib. L. 309. Rot. Cl. 32.

There are sufficient to shew what are the personalis transgressio, and personale Judicium intended to the Charter; though many the like instances may be produced.

Who

Who are the Ministers intended, partly appears by the Charter, but fuller by other Authorities, viz. Major, and Aldermen, and Sheriffs, who are in that Charter expressly mentioned.

But this Charter did not prove of any great or long advantage to the City, in differing them as to this Priveledge from other Corporations, for they were met with, either by excessive Fines, set upon their Officers for personal defaults and false Judgments.

Or that it excused the City only upon the first offence; and if again they committed the like offence, it was no longer personal but become their offence, because they did not displace their Officer to provide against his reiterated Crimes. And therefore as Mr. Solliciter hath shewn, the Liberty of the City of London, was after this seized into the Kings Hand's for Misgovernment; besides the punishment of their Ministers became difficult, because the offences being committed in London, the enquiry of them must be by Men of the same, who favoured these Officers.

And thereupon to settle this matter an Act of Parliament was made by the same King, which is in Print.

28 Ed. 3. C. 10. The principal Grounds of the Act, as the Act recites, were, that the Notorious Errors, Defaults and Misprisions for Default of good governance of the Mayor, Sheriffs and Aldermen of London, could not be enquired of, nor found by Men of the same City.

The Act settles the Rule, that for the first Default of the Mayor, Sheriffs and Aldermen, they shall forfeit a 1000 Marks; for the Second offence 2000 Marks; and for the Third default, the Franchise and Liberties of the City, shall be taken into the Kings Hands, and this for the defaults of their Ministers, which is a plain Judgment in Parliament, that the Franchise of London may be forfeited; and explains the Charter of the 1 st. Ed. 3.

And to make the remedy effectual, these defaults are omitted to be enquired after by the Juries of Foxain Counties; and so shut the door against all pretences for the Charter, 1 E. 3. and former Charters.

It is enacted that the Ordinance shall be held Firm and Stable, notwithstanding any Franchises, Priviledges or Customs.

By this Law the Fines of their Ministers for their First, and Second offences in Breach of good Government, are ascertained, which by the former Charters were at discretion: but for the Third offence of their Ministers, their Franchise might be seized as before 1 E. 3. and their other Charters might for the offence of Misgovernment, and from thence till this Statute for the Second offence.

But neither the Charter 1 E. 3. nor this Law did extend to any outragious Acts of their Members; as Breach of their duty and good Government, but only to the personal Acts of the Mayor, Sheriffs and Aldermen in their several trusts committed to their Managery.

Under this Law the City of London stood till 1 H. 4. from which King the City expected greater favours than ordinary, as having merited them by being the chief Instruments of his promotion to the Crown; but the manner wherein they were instrumental I forbear to mention.

Yet from that King they could obtain no more as to the Forfeitures for the personal offences of their Ministers and Officers, than to be put into equal condition with other Cities and Burroughs.

1 H. 4. C. 1. The Statute after recital of 28th of Ed. 3. That our Lord the King considered the good and lawful behaviour of the Mayor, Sheriffs and Aldermen, and of all Commonalty of London toward's him; and therefore willing to ease and mitigate the penalty aforesaid, by assent of Lords and Commons, hath ordain'd and Established, that the penalty aforesaid as well of the 1000 and 2000 Mark's, and the seizure of the Franchise shall not be limited in a certainty; but the penalty in the Case shall be by the advice

advice and diſcretion of the Juſtices, as other Cities and Burroughs be within this Realm, and that the remnant of the Statutes ſtand in their force: So that from 1 H.4. the City of London never could pretend to any other Exemption from Forfeiture of their Franchiſe, than other Cities and Burroughs may.

Here I crave leave to joyn ſome other Records to thoſe produced by Mr. Solicitor, particularly relating to the City of *London*.

2. Pat. Roll pars memb. 9. The King appoints John Lord Breaton Cuſtos of the City, with Commiſſion to amerce and puniſh the Aldermen and others of the City, according to their demerits. 25 Ed. 1.

8 Ed 2. Memb 3. dorſ. A Writ iſſues for the Orderly chooſing of the Mayor and Sheriffs, which began then to be Tumultuous, and as the Record ſaith, Quod quidem Populares & Plebes conſpiratione inter eas habita diſſidia innumeraque facinora in dicta Civitate, nocte dieque perpetrantes, Conventiculaque clandeſtina in locis privatis facientes, non vocati & ſummoniti hujuſmodi Electionibus ſe immiſcent communicatio ibus & clamoribus. Rot. Claus.

The Writ recites the Elections to have been, per Aldermannos & alios Cives diſcretiores & potentiores; and commands that they be ſo done, prout in eadem Civitate Antiquit' fieri conſuevit. Otherwiſe, that the King would not admit them, when preſented to him or his Exchequer.

14 Ed. 2. pars 2. memb. 22. The King grants the Office of Mayor, ſeized into his Hands at the Iter in the Tower, to Robert Kendal, durante beneplacito. Patt. Roll.

15 Ed. 2. pars 1. memb. 11. The King firſt Replevins to the Aldermen, Sheriffs and Citizens the Office of Mayor, who preſent to the King Hamond de Chigwel for the Office, and the King admits him; and then the King Grants to the Aldermen, Sheriffs and Citizens, the Mayoralty to hold at the Kings pleaſure. Patt. Roll.

26 Ed. 2. memb. 5. The King abſolutely reſtores to them the Mayoralty to Chooſe as before the Seizure into his Hands. Patt. Roll.

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Who are the Ministers intended, partly appears by the Charter, but fuller by other Authorities, viz. Major, and Aldermen, and Sheriffs, who are in that Charter expressly mentioned.

But this Charter did not prove of any great or long advantage to the City, in differing them as to this Priveledge from other Corporations, for they were met with, either by excessive Fines, set upon their Officers for personal defaults and false Judgments.

Or that it excused the City only upon the first offence; and if again they committed the like offence, it was no longer personal but become their offence, because they did not displace their Officer to provide against his reiterated Crimes. And therefore as Mr. Solliciter hath shewn, the Liberty of the City of London, was after this seized into the Kings Hand's for Misgovernment; besides the punishment of their Ministers became difficult, because the offences being committed in London, the enquiry of them must be by Men of the same, who favoured these Officers.

And thereupon to settle this matter an Act of Parliament was made by the same King, which is in Print.

28 Ed. 3. C. 10. The principal Grounds of the Act, as the Act recites, were, that the Notorious Errors, Defaults and Misprisions for Default of good governance of the Mayor, Sheriffs and Aldermen of London, could not be enquired of, nor found by Men of the same City.

The Act settles the Rule, that for the first Default of the Mayor, Sheriffs and Aldermen, they shall forfeit a 1000 Marks; for the Second offence 2000 Marks; and for the Third default, the Franchise and Liberties of the City, shall be taken into the Kings Hands, and this for the defaults of their Ministers, which is a plain Judgment in Parliament, that the Franchise of London may be forfeited; and explains the Charter of the 1 st. Ed. 3.

And to make the remedy effectual, these defaults are omitted to be enquired after by the Juries of Foreign Counties; and so shut the door against all pretences for the Charter, 1 E. 3. and former Charters.

It is enacted that the Ordinance shall be held Firm and Stable, notwithstanding any Franchises, Priviledges or Customs.

By this Law the Fines of their Ministers for their First, and Second offences in Breach of good Government, are ascertained, which by the former Charters were at discretion: but for the Third offence of their Ministers, their Franchise might be seized as before 1 E. 3. and their other Charters might for the offence of Misgovernment, and from thence till this Statute for the Second offence.

But neither the Charter 1 E. 3. nor this Law did extend to any outragious Acts of their Members; as Breach of their duty and good Government, but only to the personal Acts of the Mayor, Sheriffs and Aldermen in their several trusts committed to their Managery.

Under this Law the City of London stood till 1 H. 4. from which King the City expected greater favours than ordinary, as having merited them by being the chief Instruments of his promotion to the Crown; but the manner wherein they were instrumental I forbear to mention.

Yet from that King they could obtain no more as to the Forfeitures for the personal offences of their Ministers and Officers, than to be put into equal condition with other Cities and Burroughs.

1 H. 4. C. 1. The Statute after recital of 28th of Ed. 3. That our Lord the King considered the good and lawful behaviour of the Mayor, Sheriffs and Aldermen, and of all Commonalty of London toward's him; and therefore willing to ease and mitigate the penalty aforesaid, by assent of Lords and Commons, hath ordain'd and Established, that the penalty aforesaid as well of the 1000 and 2000 Mark's, and the seizure of the Franchise shall not be limited in a certainty; but the penalty in the Case shall be by the advice

advice and diſcretion of the Juſtices, as other Cities and Burroughs be within this Realm, and that the remnant of the Statutes ſtand in their force: So that from 1 H.4. the City of London never could pretend to any other Exemption from Forfeiture of their Franchiſe, than other Cities and Burroughs may.

Here I crave leave to joyn ſome other Records to thoſe produced by Mr. Solicitor, particularly relating to the City of *London*.

2. Pat. Roll pars memb. 9. The King appoints John Lord Breaton Cuſtos of the City, with Commiſſion to amerce and puniſh the Aldermen and others of the City, according to their demerits. 25 Ed. 1.

8 Ed 2. Memb 3. dorſ. A Writ iſſues for the Orderly chuſing of the Mayor and Sheriffs, which began then to be Tumultuous, and as the Record ſaith, Quod quidem Populares & Plebes conſpiratione inter eas habita diſſidia innumeraque facinora in dicta Civitate, nocte dieque perpetrantes, Conventiculaque clandeſtina in locis privatis facientes, non vocati & ſummoniti hujuſmodi Electionibus ſe inmiſcent communicatio ibus & clamoribus. Rot. Claus.

The Writ recites the Elections to have bæn, per Aldermannos & alios Cives diſcretiores & potentiores; and commands that they be ſo done, prout in eadem Civitate Antiquit' fieri conſuevit. Otherwiſe, that the King would not admit them, when preſented to him or his Exchequer.

14 Ed. 2. pars 2. memb. 22. The King grants the Office of Mayor, ſeized into his Hands at the Iter in the Tower, to Robert Kendal, durante beneplacito. Patt. Roll.

15 Ed. 2. pars 1. memb. 11. The King firſt Replevins to the Aldermen, Sheriffs and Citizens the Office of Mayor, who preſent to the King Hamond de Chigwel for the Office, and the King admits him; and then the King Grants to the Aldermen, Sheriffs and Citizens, the Mayoralty to hold at the Kings pleaſure. Patt. Roll.

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So then there can remain no Question, but that the Mayor, Sheriffs, Aldermen, and all the Commons in Council assembled, may commit Acts for which their Franchise may be seized: And though there may be no real difference where all the Commons assemble, and where only a certain number Elected by the rest; yet I shall not farther discuss that Point at this time, because that Question doth not arise upon this Record.

For the Offences wherewith they are charged are both laid in the Replication, to be committed by the Mayor, Citizens and Commonalty of London, by which must be intended the whole Body.

The whole Body plead to it; but in the Rejoynder they do not Travers, and deny they did the Facts: So that as to the Acors, it must be intended they are the same Persons who are Sued and defend upon Record, which are all the Members of the Corporation.

There are two Branches of the first Offence laid in the Replication:

1. That the Mayor, Citizens and Commonalty in Common-Council assembled, did make and publish a Law for levying of Mony.
2. That the Mayor, Citizens, and Commonalty, by colour of that Illegal By-Law, did exact and levy upon the Kings Subjects divers great Sums of Mony.

In the Rejoynder they take it by Protestation, That no Act or Fact of the Mayor, Aldermen and Common-Council, is an Act or Fact of the Body Corporate, or Politick; which is Protestatio Juris, non facti, and is that Error I have endeavoured to refute, That the Acts of all the Members of the Corporation assembled in Common-Council, are not the Acts of the Corporation.

But yet by this Protestation of Matter of Law, they would insinuate a Not Guilty as to making of the Law, and seem afraid to own it, and do not bare-fac'd own it.

But after they have entitled themselves to the Markets in such a manner as I afterwards consider, then they proceed to number the People, which surely was not done upon any Legal ground to move your Judgments.

Then say they, That Time out of mind there hath ben a Common-Council not exceeding 250 Persons, elected out of the Freemen; but do not say of what Number it doth consist, nor by whom Elected, whether by Citizens or Forreigners; by the Mayor, Aldermen, or by whom chosen, so as the Court may judge of the Matter of Law so strongly protested, whether they were the Representatives of the whole Body, or no.

Then they say, Sir William Hooker Mayor, and the Aldermen of the City ac Communarii, sive Cives de Communi Concilio ejusdem Civitatis; which may as well be intended of Mr. Recorder and the Common Serjeant, who are de Communi Concilio Civitatis, as of any other, for the persons are not named, nor is it said they were Elected, nor by whom, nor any Words of reference to the Custom alledged; but generally, that they met in Communi Concilio secundum consuetudinem Civitatis, not referring to the former Custom alledged.

But being met, they made the By-Law for the several Sums of Mony, to be received for the Use of the Mayor, Citizens and Commonalty.

Which Rates, and no other, the Mayor, Citizens and Commonalty, Exegerunt & perceperunt, according to the By-Law.

Qui quidem Actus sive Ordinatio est eadem Lex, supposed by the Replication, to be made by them the Mayor, Citizens and Commonalty.

And Traverse absque hoc, that any Law was made for Monies of Persons coming to the Markets aliter vel alio modo, than they had before set forth.

I

I know thoſe Learned Gentlemen who ſigned this Plea, and the other to the Charge of the Petition, if they could have found ſufficient matter of Juſtification to either, they would not have ſuffred them to appear upon Record in ſuch uncouth Dreſſes; and therefore deficiency of Matter may excuſe the inſufficiency of Pleading; for there is skill ſhewed in the contrivance, to have drawn on a Demurrer, for nothing was dreaded more than an open Examination of the Facts upon a Publick Trial, which would have fallen very little ſhort in both Caſes, as to the Aggravation laid in the Replication.

Upon this Pleading, the Mayor, Citizens and Commonalty have confeſſed, that the By-Law was made for them, and the Monies to be levied for their uſe. They have alſo confeſſed, That by force of that By-Law they exacted and received the Monies; and their Juſtification will be conſidered by and by.

But as to the making the Law, they neither confeſs it made by themſelves, nor by any deriving Authority under them; neither do they traverſe, or deny it.

For the Averment, that it is the ſame Law, and the Traverſe, that any Law was made aliter vel alio modo, is no Legal denial, that the whole Corporation (conſiſting of Mayor, Citizens and Commonalty) did not make that Law upon which an Iſſue could be taken.

Beſides, if Mr. Recorder would have the Court intend, that the Common-Council ſet forth in the Rejoynder, is a diſtinct Body of men from the Politick Body of the whole City, the whole Plea amounts but to the General Iſſue; what the conſequence thereof will be, I will conſider upon the Point of the Crimes ſet forth; but at preſent the Court cannot otherwiſe intend, but that they that made this Law and this Petition, were the ſame Mayor, Citizens and Commonalty, who are expreſly charged therewith, and in their Pleas they do not Traverſe or deny it.

It is juſt ſuch another Plea, as where an Information is brought againſt ſeveral Perſons, for killing and taking away of the Kings Deer; the Defendants ſhould plead, That certain perſons (not naming them, nor from whence they come, nor by whom ſent) pretended a Cuſtom to kill the Kings Deer, and according to that Cuſtom they killed the Kings Deer for the Defendants uſe, and the Defendants carried away the Deer. Who (I pray) ſhall the Court intend killed the Deer, but the Defendants, or ſome by their Authority?

I now come to the main Point of the Caſe.

Whether by any thing diſcloſed upon thoſe Pleadings, there appears a ſufficient Title to the King, for the Court to give Judgment of Seizure of the Franchiſe of the City of *London*? Principal Point.

The Title I inſiſt upon for the King, is for a Forfeiture by Acts done by the Mayor, Citizens and Commonalty in breach of their Duty, and the Publick Truſt repoſed in them upon their firſt Erection.

It is my part to maintain, That the Cauſes aſſigned are ſufficient in themſelves, and ſufficiently diſcloſed to the Court, for the Court to give Judgment upon.

I ſhall conſider then,

First, As they ſtand upon the Replication, as Crimes laid to their Charge, which will amount to a Forfeiture of the Franchiſe.

Secondly, How they ſtand upon the Rejoynder and other Pleadings, whether ſufficiently traverſed or denied, confeſſed and avoided, or in the leaſt extenuated.

First,

First, The Crimes laid in the Replication, are two in general:

1. Oppression of the Kings Subjects by colour of Law: And,
2. Stirring up Seditions by Libelling their Prince and his Government.

These two only are laid in the Replication, but collected out of many sufficient Causes for Seizure of any Franchise.

The Notorious Riots committed in the Face of Justice, to the comforting and abetting of Criminals, and terrour of the Judges; and those not only not suppressed or punished by the Magistrates, but countenanced and encouraged by them.

The Tumults of many Thousands, exposing and burning in Effigie several of the Kings Protestant Subjects, not suppressed or punished by the Magistrates; but by some encouraged, and by Contributions supported.

The encouragement of Libels and Libellers of the King and Government, by and within the City.

These and many more I could enumerate are common Offences to the City of London, with other Cities and populous Corporations; but these are such as have been in the Cases produced adjudged causes of Forfeiture of the Franchises for Misgovernment.

And in these London hath but imitated it self in former Times, and other Cities and Burroughs.

But in the Cases insisted upon, London hath outdone it self, and all other Cities and Burroughs too, by assuming a Power to make Laws, for levying of Money upon Foreigners for their own use; and to deliberate, adjudge and condemn their Princes publick Actions, and publickly Libelling of them to his Subjects.

Never did London before now, or any other City or Burrough (in times of Peace, and not under an actual Rebellion) ever commit the like Breaches upon the Government, to assume a Power superiour to any the King hath in like cases, to lay burdens upon his People, and to levy Money; and to invade the Kings Prerogative by deliberating and determining of his publick Actions to the consequences thereof, and publickly Libelling them to the rest of his Subjects.

And in Execution of such unjust Power, That the Mayor, Citizens and Commonalty, did make and publish a Law for levying of Money upon the Kings Subjects, as well Foreigners as others, coming to the publick Markets with Provisions.

And chargeth several particulars, and divers other Sums imposed upon all Comers to the Markets, whether they sell or no; and that if any Person refused to pay, he should be put out of the Market.

Secondly, That the Mayor, Citizens and Commonalty, by pretext of this Law (made by themselves, and for their own private Lucre) did exact and levy yearly of the Kings Subjects, Sums of Money amounting to Five Thousand Pounds per Annum, and converted and disposed the same to their own use.

In subversion of the good Government of the City.

In oppression and depauperating the Kings Subjects, coming to the Markets.

In raising the Prices of Provisions in Markets, to the damage of the Kings Subjects.

To the manifest disherison of the King and his Crown, contrary to the Trust reposed in them as a Body Politick.

In this first branch of their levying Money there is this Crime laid to their charge.

An Abusion of the Liberty of a Body Politick in its highest point of Trust, *viz.* of making Laws for the better government of its Members, and other the Kings Subjects repairing to the City.

This

This is no diſtinct Liberty from the Body Politick, but incident to it, as hath bæn ſhewn, and thereſoꝛe cannot foꝛ any Abuſe be ſingly loſt, oꝛ ſevered from their Body Politick, no moꝛe than the Body Politck can ſubſiſt oꝛ attain the ends of gꝏd Government, without ſuch a Power which the Law raiſeth foꝛ a better diſcharge of that Truſt.

But the Law entruſteth no Coꝛpoꝛation with a Power to levy Mony foꝛ their pꝛivate Pꝛofit, be the colour what it will; noꝛ can ſuch Power be derived from the Crown to any Coꝛpoꝛation.

Neither can any Authoꝛity be pꝛoduced, that gives the leaſt countenance to ſuch an Authoꝛity: The Caſe of Blackwell-Hall is expꝛeſs againſt it, that was Ruled gꝏd, becauſe it was pro bono publico, and not pro privato lucro; it was but a ſmall Reward foꝛ the Officer who attended that buſineſs; the City got nothing thereby.

Coꝛpoꝛations, as well as other Communities not Incoꝛpoꝛate, are by Law entruſted with Power to raiſe Mony foꝛ uſes publick to the Community; but ſuch Power is confin'd to the Pꝛecincts of the Community. They cannot lay their Charge upon Foꝛeigners, as foꝛ Reparation of Church, High-ways, Bꝛidges, and ſuch like publick Charges.

Theſe Crimes at Common Law came the neareſt Treaſon, as any.

Sir Thomas Halley, 20 R. 2. foꝛ pꝛeferring a ſcandalous Bill, was adjudged to die as a Tꝛaytoꝛ: His Life ſpared at the inſtance of the Biſhops, and after 1 H. 4. N. 9. upon his Petition the Judgment was reverſed. 20 R. 2. N. 160

To lay Impoſitions upon the Kings Subjects, was not not only an incroachment on Ꝛoyal Power, but of the Power of Parliaments.

And what incroachments of Ꝛoyal Power were Treaſon, what not, was in the Bꝛeaſt of the Judges, as appears by the Petition in Parliament, 21 Ed. 3 Nu. 15. and after ſetled by the Statute 25 Ed. 3.

Certainly that they have an immediate tendency to a Rebellion is evident. To alienate the Subjects Affection from their Pꝛince, is a great ſtep that way; and foꝛ ſo great a Body of Men (both foꝛ Riches and Reputation) to adjudge and publiſh, That the King by his Pꝛoꝛogation hath interrupted the publick Juſtice of the Kingdom, and the neceſſary Pꝛoviſions foꝛ his own ſafety, and the pꝛeſervation of his Pꝛoteſtant Subjects, is in effect to determine and publiſh the King unfit foꝛ the Government, and by neceſſary conſequence would alien the Affections of ſuch as ſhould believe them.

Add to this, the Power they aſſume and juſtifie, to levy Mony to their own uſe, upon Foꝛeigners as well any Citizens, and that to any Sum which Mr. Recorder pꝛeſſed as the foꝛce of his Argument, That little oꝛ moꝛe made no difference, when thoſe they have perſwaded to dꝛaw their Affections, ſhall be aſſured of ſuch a Legiſlative Power to aſſiſt them with Supplies; what conſequences may be expected, every man may judge.

Eſpecially if one thing moꝛe had bæn effected, as was contrived and endeavoured to be eſtabliſhed, That London ſhould become the Aſylum of all Malecontents, as Rome was heretofoꝛe, who might there vent their Gaul againſt the Government impunè, and without fear of Conviction.

I ſhall conſider the Offences particularly, as they ſtand upon the Replication, as to the Levying of Mony.

Firſt, They are Charged, That they in Common-Council aſſembled, reſpecting only their pꝛivate Lucre, and in bꝛeach of the Truſt repoſed in them foꝛ gꝏd Government, did aſſume upon them an illegal and unjuſt Power and Authoꝛity, to levy Mony upon the Kings Subjects to their own uſe, without any lawful Authoꝛity.

And the City of London have by ſeveral Charters ſuch expꝛeſs Power given them, but 'tis confined to their own Members; neither the King noꝛ the Law ever gave them any power over Foꝛeigners, to charge them foꝛ the pꝛivate Pꝛofit of this City.

Now to assume such a Power is a plain Usurpation by a Body Politick upon the Crown and the Law, and is a manifest breach of that Trust for good Government, by an open and avowed oppression of the Kings Subjects by colour of Law, which is the worst of Oppressions; and therefore the Law not only gives a new Name, but layeth heavier Penalties upon Oppressions, committed by Persons in publick Trust.

It is called Extortion, and Oppression, where committed by any person in publick Offices or Trusts. It is not sufficient that the injured persons may have their Actions, or that they may be Fined at the Kings Suit; but the Law gives a Forfeiture of the Places of Trust, and all may be exacted from them, if the King please: The persons injured may recover their Damages: They may be fined at the Kings Suit, and their Offices seized, the Law adjudging all these Penalties but equal to the Crime.

The Markets, as they stand upon the Replication, must be intended Free Markets, as the Streets of London are for all the Kings Subjects to have recourse to with their Provisions, for supply of the Inhabitants, without payment of any Toll.

The Sums of Money for buying whereof the Law is made, as set out in the Replication, cannot be for any Toll of Markets, nor for Picage or Stallage, which may be annexed to Markets; but imposition upon the Persons, or Goods, coming and brought thither, whether they sell or not, and whether they have any Stalls or not.

And the Process is admirable, That if the person refuse to pay, he shall be turned out of the Market; as if the Law were, That every man that walks in the Streets should pay 6 d. and if he refuse, he should be turned out of the City. I must confess, the Process is as good as the Law.

Thus this Crime stands upon the Replication.

How have the Mayor, Citizens and Commonalty varied it in their Rejoynder?

Not one jot; for as to this point of Charge that they usurp'd such a Power, and did execute it by making a Law for Levying of Money in oppression of the Kings Subjects, They give no Answer at all, either by traversing or denying, confessing and avoiding.

If they had traversed their making of the Law, the Special Plea had amounted to the General Issue; but as it is, there is no Answer at all given to it.

And therefore, if the making of such a Law, in the manner set forth in the Replication be an abusion of the Franchise, Judgment of Seizure must be given for that Abuse.

The Reasons given by Mr. Recorder, that the making of this Law will not forfeit the Franchise, were these:

1. That if the King had made such a By-Law in the Charter of Incorporation, that would not have forfeited the Corporation; no more can it, if it be made by the Corporation afterwards.

Respons. I do not understand the mystick Inference of this Argument, unless it be to continue the Allegory of resembling Corporations to Kings; That they can do no Wrong, and consequently can forfeit nothing by their Acts, tho' against Law.

Where the King annexeth any Power to any Offices or Corporations, which the Law allows them not to exercise; the Law doth not adjudge the whole Grant void, but only those Powers: But if Officers or Corporations shall assume upon themselves to exercise Powers which the King could not grant against the End of their Institution, by Extortion and Oppression of the Kings Subjects; it is not sufficient that the Acts

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are void, because illegal; but the Offenders shall be punished in such manner as the Law provides.

2d Reason. In all the Suits where By-Laws have been adjudged unreasonable and void, it was never held or said, that such By-Laws forfeited the Corporation; and if it should, every little Mistake in the By-Law should forfeit the Corporation', which would render the state of Corporations very unsteady and uncertain.

I Answer, first, That in those Suits betwen party and party there was no occasion for the Court to declare, how far the By-Law has intrenched upon the Prerogative, by breach of the Condition in Law, annex'd to the Liberty.

But I remember, in the Case of the Mayor of Wiccomb, upon complaint in this Court to my Lord Chief Justice Hales of his Refusal to sign the Poors Rates, he publickly declared to him, That if he persisted in his obstinacy, a Quo Warranto might be brought to seize the Franchise. Mich. 27 Car. 2.

Secondly, There is a plain difference betwen By-Laws, for regulating the Actions of the Members, and others within the Corporation, with a Penalty to enforce Obedience, and a Law directly for Levying of Money; in the latter Case, the Levying of the Money is the principal end of the Law, and to levy it pro privato lucro, and upon Forreigners, can receive no palliation from being a mistake against all the Laws and Authorities that are extant: But in the former Cases they have a semblance for common benefit, and possibly might be for the benefit of all the Members, could the Restriction be made by Law; and the Penalty is but collateral, to enforce Obedience, and will stand and fall as the Law determines of the Principal.

And the Law no where determines all the Cases, where the liberty of any Members (as to Trade) may not or may be restrained, whereby there is room left for mistakes; but against so known and universal a Principle, that no Corporation can levy Money for their private Profit, no excuse of mistake can be admitted.

Thirdly, That which shelters all other By-Laws from Oppression is wanting in this; That as to the recovery of the Penalty they refer to a course of Law, whereby they submit their By-Law to the Judgment of Law for its validity, that if they have committed any mistake, it may be corrected by Law.

But here the Remedy is plain Force; if the person do not pay, he shall be turned out of the Market with his Goods; what was setled by Wrong shall be recovered by Force.

Thus Mr. Recorders arguing, makes the Duty a mer voluntary Payment; it is solve aut abi, he hath his election, to pay or be gon. I have not met with a more arbitrary Principle asserted, or defended in a Court of Law.

Should the King lay an Imposition of 12 d. on every one that entred Whitehall, with order to the Porter, to turn him out upon refusal of payment; what a Dust would this make, That the Subjects Rights to have access to their Prince, were invaded? Why 'tis no more but solve aut abi.

The Right of all the Kings Subjects, to come with the Provisions to publick Markets, is far greater, and as great as of the Lord Mayor, or any of the Citizens to come there; and the putting such Terms upon their Right is absolutely illegal in the worst sense that Word is at any used.

And herein Mr. Recorder was in the right, That more or less are not material, because every Sum imposed in such case is illegal, and what is illegal cannot be reasonable; which absolutely precludes the Averment,

ment. That the sums were reasonable which obtains only in such Cases, where of Common Right some Sum may be taken.

Fourthly, In the last place, the Questioning of a Liberty in a Quo Warranto, whether upon the Title or for a Forfeiture, is upon the Right, between the King and the Corporation.

In Case of mistakes and Common Errors committed, those are not to be Justified upon a Question of Right, and if they be, they are no longer mistakes but wilful Crimes.

And therefore in all times such mistakes, both in making of Laws and matters of Fact, to have been passed by and pardoned by the Charter of Confirmation, Etiamsi abusi fuerint.

And in the Multitudes of Quo Warranto's that have been brought, most ended by Submission before pleader.

But where it shall be insisted upon in Point of Right, though in a smaller Point of oppression upon such Grounds, as may equally intitle them to commit the greatest Oppressions, Magis & Minus do not affect the Case in Point of the Right of Forfeiture; But the Question is, Whether they have broken their trust? and if so adjudged, Forfeiture is a necessary Consequence.

The Third Reason, Mr. Recorder insisted upon is, 19 H. 7. cap. 7. That there had been no need of that Law, if Corporations By-Laws would be Cause of Seizure.

Resp. 1. That Statute extends not to the By-Laws of Cities and Burroughs incorporated; but to Guilds and special Fraternities.

Secondly, It extends to good By-Laws as well as Bad, for greater caution that they put no New By-Laws in Ure till allowed; but the allowance maks them neither better nor worse, only shelters for the 40 l. penalty, in the Taylors of Ipswichs Case, C. 11. b. f. 54. So that the By-Laws are but of the same force they were before that Statut, &c. if they are good Laws they may be executed without allowance; and I have before shewn that the addition of another penalty, doth not dispense with the penalty upon Breach of the Condition given by the Common-Law.

Co. 11. 6. f. 54.

The other Crime of oppression they are charged with is, that they did Exact and Levy to their own use, the several sums and others amounting to 5000 l. per Ann. in oppression of the King's Subjects, and Raising the Prices in the Markets for their own private Lucre.

In their Rejoynder, taking by Protestation they are not of that value, the Mayor Citizens and Commonalty acknowledge the exacting, and receiving the Monies to their own private use, but say not of what value they are, but be they of what value they will, attempt a Justification.

It must be admitted that if the Justification be insufficient, the Court cannot otherwise Judge of the Crime than as it is laid in the Replication, where it appears to be as great Extortion and Oppression of the Kings Subjects, and continued for many years together, by colour of an Authority usurped by them, as ever was practised by any Subjects, upon their fellow Subjects; which cannot be denied to be an apparent Breach of that Trust committed to them, for the better Administration of the Laws and Justice to the Kings Subjects.

The Parts of their Justification are these;

1. A Custom, that time out of mind, there have been Publick Markets within the City.
2. They make Title to these Publick Markets by Prescription, but claim not any Toll of Common Right belonging to these Markets.

So that both upon the Custom alledged and Prescription made, the Court cannot otherwise intend but they were free Markets, as in truth they were.

Then

Then they alledge a cuſtom that time out of mind, they uſed at their charge to provide places where the Markets were held, and Stalls and Stations, and other accomodations for the Market People, and Surveyors and other Officers, for the better Government of the Market People, and did cleanſe and were bound to cleanſe the Market places.

And for defraying of their charges for all the time aforeſaid, they had and uſed to have diverſa rationabilia Tolneta, Ratas ſive denariorum ſummas, of all perſons coming to the Market for Stalls, Stations and other accomodations for the ſelling of their Proviſions.

Although they received Monies time out of mind, and until the By-Laws; they cannot tell what theſe ſums were, nor what to call them, whether Tolls, Rates or ſums of Money.

Tolls they could not be, that is admitted of all Hands, becauſe againſt Common Right, and to be paid upon entry into the Market, whether ſold or not.

They do not intitle themſelves ſo much as to Picage or Stallage, for they make no Title to the Land where the Markets have been, or are held.

And we all know that before, the Act of Parliament provided at the Publick Charge fit places, and ſetled them upon a Publick Truſt for Market People; what Proviſion was made of Places by the City, viz. In the Publick Streets, where there ever was a Free Market for Proviſions, as would have been made evident, had the City tendred a ſufficient Iſſue.

Beſides the Sums Charged in the Replication, can neither be of Picage or Stallage; but laid upon Goods brought within the Market, whether the vender make uſe of any Stall or Breaking of the Ground or no.

Neither is it averred in this Plea or by any Words of reference, can be inferred that the ſums in the Replication are the ſame with thoſe they claim; They claim only by cuſtom rationabilia Tolneta Ratas ſive denarior' Summas.

Mr. Recorder would Juſtifie this Plea, that ſuch a general claim with an Averment that they are reaſonable, is a ſufficient Juſtification of particular charges, which are againſt Common Right; and inſiſted upon the claim of the City of London, of the Water-Bayliffs Office, with the Fees thereto belonging; and the Caſe of Maidenhead in Palmers Reports, of the Market with the Toll thereto belonging; Theſe Precedents anſwer themſelves, there was no particular charge for the Toll or Fees, but what charged particularly is anſwered; Beſides the Toll and Fees are claimed of Common Right, as belonging to the Market and Office.

In Maidenheads Caſe the Judges agreed, that Toll according to Common Right might be Granted by general Words; But Toll againſt Common Right could not, nor be preſcribed for but in certainty.

In that Caſe Reported by my Lord Hale, Franchiſe, pl. 11. the difference is expreſsly taken; and the Authorities cited of 9 H. 6. 45. 11 H. 6. 14. Fit. Avowry 126. That demands againſt Common Right, ought to be preſcribed for in certainty; and the Authorities produced by Mr. Recorder in the Lord Cobhams Caſe, 1 Len. 218. Hickmans Caſe 2 Roll. Abridg. 125. and Roll. 2. Abridg. 265. The Caſe of Dublin for Keyage or Cranage, ſo the Caſe of Hill and Hawks, and the Bell-Man of Lichfield, prove it.

No Man queſtions but Cities and Burroughs, upon good conſideration may preſcribe for Sums of Money againſt Common Right; and may preſcribe for an apt remedy for recovery of ſuch Sums; but all the Authorities prove it muſt be preſcribed for in certainty, that the Court may Judge of the reaſonableneſs of it.

And whoever claims againſt Common Right muſt make out his demand both in certainty, and that it is reaſonable, otherwiſe it is where

according to Common Right, as in Fines for Copyhold Estates, it is incumbent on the Tenant to shew it unreasonable.

Besides, this custom is void, because they do not Intitle themselves to any remedy for these uncertain Sums.

4. The next part of the Justification is, that time out of mind, within the City there hath been a Common Council; the Imperfection whereof I have already observed.

5. They set forth a custom for this Common Council to make Laws for the better Government of the Markets, and appointing convenient places and times for the Market. Et ex Assessione & in certitudinem reductione of reasonable Tolls, Rates or Sums of Money to be paid by persons coming to the Market, pro Stallis, Stationibus & alijs accommodationibus.

So as these Laws be profitable to the King and his People, and not contrary to the Laws of the Land.

For the First part of the special custom, for the better Government of the Markets, and appointing convenient places and times, it needed not; for it is incident of Common Right to every Lord of a Market, and the Grantee of every Market without special Clauses hath the same power and Trust.

And yet it is ushered in with great Solemnity, a confirmation by Magna Charta, a Charter in Parliament, 1 Ed. 3. & 7. R. 2. to make good a custom, which is, but the Common Law.

Unless they set up this custom to divert themselves, who have pleaded themselves Lords' of the Markets, and so to fix it in others who are no Lords of the Markets; and thence to infer that the custom having intrusted others than the Mayor, Citizens and Commonalty with the Government of the Market, they the Lords of the Market ought not to suffer for the Misgovernment of those other Members.

The Second part of the custom is insensible.

To make Laws and Orders, ex Assessione & in certitudinem reductione of reasonable Tolls, Rates or Sums of Money, to be paid by all persons coming to the Markets for Stalls, Stations and all other Accomodations.

What is meant by Assessione without an Anglicè, I cannot imagin; it is no Law Term; in its proper Signification, it signifieth sitting together; whence our Sessions quarterly, and Sessions of Parliament have their Name.

The general Rates set by the Parliament upon the several Counties, are sometimes called Assessments, and these intrusted with equally dividing the Rates in the several parcels upon the Inhabitants, are called Assessors.

In which of these senses or what sense the City's Council apply this Word, I cannot resolve; for Mr. Recorder did not resolve it. It seems by the subsequent Words to be explained in certitudinem ponere, and to have some resemblance to the Parochial Assessments, where the duty before is imposed by Law, but the ascertaning of every Mans proportion is done by the Assessors: And this Mr. Recorder inclined to in his endeavurs, to support the custom, generally for reasonable Rates. And in this sense too the City seems to understand it by waiving of the Assessment in their Rebutter.

In our Surrejoynder we traverse the Prescription of taking of the Rates mentioned to be by the By-Law Assessed, and reduced into certainty, which Issue they wave, and insist only upon their Prescription generally alledged.

Now if taken in this sense the Clause is wholly insensible and incertain, because the Tolls, Rates or Sums of Money to be paid, are not referred to any former Law that imposed them; They do not so much as refer to the Prescription and the Sums claimed thereby, but the Clause is Independent and absolute of it self.

Neither

Neither can the Court now intend it to refer to thoſe Sums claimed, becauſe we would have ſo intended it, and therefore took an apt traverſe; but the City waived it in their Rebutter; and they do lie under this Dilemma, That either it muſt be ſo intended, and then being traverſed and waived by them the Iſſue muſt be taken againſt them; Or it cannot be ſo intended, and then the cuſtom is incertain and inſenſible.

And it cannot be intended by the Court for levying of Money by a new Impoſition for the private advantage of the City: That (as I have ſhewn) would be againſt Law, and is contrary to the Preſcription they have made, and would viciate their Plea by claiming the Thing by Preſcription and by a new Law.

6. They ſet forth a By-Law, which imports a new Impoſition throughout, of ſeveral Sums to be paid to the Mayor, Citizens and Commonalty; and they provide a new Remedy, that the Refuſer ſhall be removed out of the Market.

They aver indeed the Sums are reaſonable, but ſet out no Fact upon which the Court may any ways judge they are ſo, which are incumbent upon him that will claim any thing againſt the common Right.

They do not ſo much as aver, That the Mayor, Citizens and Commonalty, laid out one Penny out of their Revenue, for providing the Markets and Stalls, or what other ſtations or accommodations they furniſhed the Market-People with, ſo as to give the leaſt ſupport to this extraordinary By-Law.

And this Averment was induſtriouſly left out, leſt Iſſue might be taken upon it; and ſufficiently proved, that both the Places, Stalls, and Conveniences, were provided for out of the publick Monies, granted by Parliament in Truſt for all the Kings Subjects coming to the Market, as we have ſet out in our Surrejoynder.

Then it would have evidently appeared, that this By-Law was not only in breach of the Common Law Truſt, repoſed in them for good Government; but in breach of that Truſt repoſed in them by Act of Parliament. For all the Kings Subjects, and theſe publick Moneys received and laid out upon that Truſt, are made the Conſideration to ground the Subjects Oppreſſions upon by this By-Law.

Though they laid out not one Penny, as appears to the Court; yet they acknowledge to have received all the Money to their own uſe; and their Juſtification failing, it muſt be intended, they did it in ſuch manner as is ſet out in the Replication, which chargeth the higheſt Oppreſſion that can be poſſibly committed by Subjects upon Subjects, and is deſtructive of common Juſtice and good Government.

It is likewiſe as great an Uſurpation upon the Crown, to lay Taxes upon the Kings Subjects without his Authority, and openly and avowedly to juſtifie it.

How much ſuperiour this Offence is to thoſe, whereupon Inſtances of Seizure have been given, I leave to the obſervation of the Court.

Object. That the Toll only can be forfeited, or at moſt the Markets, can weigh little.

That the Markets cannot be forfeited, Mr. Recorder admits upon the Authority of the Caſe of Maydenhead, That Toll is not incident to a Market.

This Impoſition is wholly foreign to the Markets, which muſt be intended Free-Markets, wherein all the Kings Subjects have Right to ſell and buy, diſcharged of Toll, which ſhall be intended to have its commencement by Creation, not by Grant to any perſon, which the King may do in caſes of Fairs and Markets.

Or if they be granted to any Perſon, if without Tolls, ſuch Grants are upon Truſt, for benefit of the Kings Subjects to buy and ſell in; and the Grantee entruſted with the Rule and good Government thereof, for the benefit of others.

Beſides,

Besides, the Seizing of the Markets is no punishment of the Corporation, but to all the Kings Subjects, who are the persons oppressed, and whose Rights are invaded by this Imposition.

The Oppression is by the Corporation, and by an Authority they claim over the Kings Subjects, to lay an Imposition upon their Goods, and to levy it by Force; which is an abuse of the Power the Law hath entrusted them with, and a misuser of the Franchise to oppression.

To forfeit the Sums exacted and levied is idle, and no Punishment; for they never had Right to them, and so no Right to be forfeited.

In the Case of Maidenhead, where a reasonable Toll was granted, they had a Right to Toll, which may be forfeited by Abuser, in taking an unreasonable Toll; but where there is no Right to take any thing, there is no Right to be forfeited, but that Right by colour whereof the Extortion or Oppression is committed.

R. Quo Warranto 1. If an Officer, by colour of his Office oppress, the Office is forfeited, or the Officer may be Fined; the Cases were cited by Mr. Solicitor.

The levying of Two shillings for the Penalty of breaking the Assize, forfeited the View of Frankpledge.

Using of false Weights and Measures, forfeited the Franchise of Evesham.

And generally, whatever is an apparent breach of good Government, wherewith every Franchise is entrusted, will in point of Right between the King and the Franchise amount to a Forfeiture; because 'tis a breach of publick Trust, reposed in them by Law.

Second Crime, Petition. I shall conclude with the last Branch of the Crimes laid to their Charge;

For Invading the Kings Prerogative, and publickly Libelling of him and his Publick Acts to the People.

The Replication chargeth the several Facts thus:

1. That the Mayor, Citizens and Commonalty, in Common-Council assembled, maliciously, advisedly and seditiously, and without any lawful Authority, took upon them to censure the King, and the Prorogation of Parliament made by the King.
2. They gave their Suffrages, and ordered a Petition should be presented to the King, in the Name of the Mayor, Aldermen and Commonalty, containing the scandalous Matter alledged.
3. That they maliciously, advisedly and seditiously, and to the intent the said Petition should be dispersed and made publick, to perswade them, That the King by the Prorogation had obstructed the publick Justice of the Kingdom; and to stir them up to a dislike of the Kings Person and Government, and to disturb the Peace of the Kingdom; did order the said Petition (containing the said Scandalous Matter) to be printed.
4. They afterwards maliciously, advisedly and seditiously, and to the intent that the Petition should be dispersed and published among the Kings Subjects, to alien and withdraw their Affections from the King and his Government, did print, and cause to be printed and published the said Petition, in contempt and scandal of the King and his Government, and to the promoting and exciting of Sedition and disturbance of the Peace within this Kingdom.

These Crimes at Common Law were contra Pacem, and punishable by Fine and Imprisonment in particular Subjects. Where committed by persons in publick Office, or entrusted with Government and preservation of the Peace, they are of a deeper dye.

In the Title of the Statute, 13 Car. 2. cap. 1. for Preservation of the Kings Person and Government, they are called Seditious Practices and Attempts; for prevention whereof that Law provides, That if any Person or Persons shall maliciously and advisedly (by Writing or Printing) express, publish

or

or declare any Words, Sentence or Thing, to incite or ſtir up the People to hatred or diſlike of the Perſon of His Majeſty, or the Eſtabliſhed Government; ſuch Perſon is made incapable of any Office or Place of Truſt, and to be further puniſhed, according to the Common Law and Statutes in ſuch caſes.

This Law takes notice they were Crimes at Common Law, and puniſhable as Seditious practices. Sir James Baggs Caſe allows Conſpiracies and Ignominious Crimes to be cauſes of Diſfranchiſement; much more a Conſpiracy of all the Members, to Libel the Government, and alienate the Affections of the People from their Prince.

Now what Anſwer do they give to theſe Charges in either Rejoynder?

1. To the firſt and laſt they give none at all.

They ſhew no Authority for them in Common-Council, to debate, deliberate upon, and to determine of Prorogations of Parliaments by the King, or the Conſequences thereof, which are inter ardua Regni, and not to be treated of but by the Kings Writ; they are not of the King and Kingdoms Common-Council; but intruſted to adviſe in Affairs of the City, and ne Sutor ultra crepidam.

They are charged to have done this adviſedly, ſeditiouſly, and without any Authority; and 'tis charged precedent to the Petition.

To the 4th, For Printing or Publiſhing of it, to the intent that it ſhould be diſperſed amongſt the Kings Subjects, to alien and withdraw their Affections from the King, laid to be 13 Jan. 32 Car. 2.

They ſay it was printed by Samuel Roycroft, by the Mayors appointment; Quæ quidem Petitio & Impreſſio ſunt eadem Petitio, Impreſſio & Publicatio, in the Replication mentioned: And Traverſe, Abſque hoc quod aliqua Petitio concern' Prorogationem præd' fact', ordinat', publicat' ſic Impreſſ. fuit aliter, vel alio modo quam; but do not add vel alio tempore. In which reſpect this Plea is ſtronger than the former, to involve the City in the Guilt.

Then they own the Petition was Voted and Ordered to be preferred and printed Nemine contradicente, to be ſure to leave not one Citizen out of the Guilt; but they do aver the Printing, was to undeceive their Fellow Citizens, whereas the Charge is, that it was to deceive them.

The whole Plea amounts but to the General Iſſue, admitting the Petition it ſelf were juſtifiable, and the making of the Petition lawful.

Many things in themſelves are lawful, yet if done with an Evil intent, and for an Evil purpoſe, become unlawful and criminal, and upon Not Guilty, Proof muſt be made of the Evil intent; where the thing it ſelf is unlawful, there needs no other Proof.

To lie under an Hedge on Shuters-Hill is lawful; but to lie there in wait to kill or rob a Man is unlawful, and imports Scandal. Lukner and Crutchly, 4 Car. Cro. 140.

To lay Wool near the Sea-ſide is lawful; but laying it there with an intent to export it, is criminal, and forfeits the Wool. Lock and Lock 15 Jac. Roll. Abr. 50.

And it is not good in Pleading to anſwer ſuch Intent with contrary Averments; but where the Intent is Subſtance, it muſt be traverſed or denied ſpecially, otherwiſe the Plea amounts to but the General Iſſue.

This manner of Defence, or ſhadow of Juſtification, proves one eſpecial Ingredient of the Charge,

That it was done adviſate: The City ſay it was upon weighty Conſiderations, and many Occurrences deliberated upon, and relate to them, all upon Record, that the Court may judge, whether they had not good Reaſon for what they did.

And if they could judge, That their whole Hiſtory taken together are no ſufficient Conſiderations for any Subjects to agree or order any Petition to be preferred and printed, to ſtir up the Subjects to a diſlike of the Kings Perſon and Government, which is charged upon them and not anſwered; the Court muſt adjudge the Fact to be done Maliciouſly and Seditiouſly.

But the Words of the Petition are in themselves Scandalous to the King and Government.

Petitioning is lawful, and the City of London have often petitioned the King with good acceptation, and observed a good Decorum becoming Subjects, both in the Matter and Manner of their Petitions; they used not to advise or meddle in matters of State, but when sent for to advise, they confined themselves to the affairs of the City.

They never before, as I have met with, charged the Kings Acts of State as Interruptions of the Prosecution of publick Justice.

The Words of the Petition are,

> Your Petitioners were extreamly surprised at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom; and the making the Provisions necessary, for the Preservation of your Majesty and your Protestant Subjects, hath raised an Interruption.

To delay, interrupt or deny Justice, spoken of any person intrusted with the Administration of Justice, and spoken of him in Point of his Trust, always imports Scandal; in the Case of the Common Magistrates, they do necessarily import Breach of duty; neither in Common parlance amongst the vulgar, nor any History or Author that I have met with, were they ever used in any Sense of Credit or Reputation, to the person of whom they were spoken or published.

Interruption of Justice is a greater Imputation than delay barely, because the one may be a meer Omission; but Interruption imports some Act whereby Justice is stopped; but both are temporary Denials of Justice, as denial is an absolute stop of Justice.

Nulli Negabimus aut Differemus Justitiam are not only the Words, but the Duty of every King.

To say or publish of, or to a King in the Point of the exercise of his Kingly Office, and a Point of as High Trust as any is, that of the Prorogation of Parliaments, that he hath interrupted the Prosecution of the publick Justice of the Kingdom, imports the greatest Scandal imaginable.

For it was more of the Kings Duty than of either Houses of Parliament, to promote the Prosecution of publick Justice, especially in the Cases set forth, which so nearly concerned his Person; and therefore the charging of the King with the Interruption of that Justice, is of greater Imputation to the King.

And the more Instances they give, is an Aggravation of their Crime, by charging the King with Interrupting the publick Justice in all these Instances.

And there is as much venom concealed in as few Words as ever I met with; Tacitus did never out-do the Penner of that Petition, whereby all the Principal Attributes, the Law makes necessary for Princes, are Impeached at once, both the Judgment, Mercy and Wisdom of the King.

The Interruption of the publick Justice reflects upon his Justice in a high manner.

The Interruption of the means of his own Preservation, besides his Justice reflects upon his Wisdom; That the King should not, take care thereof, or did not foresee the Danger he put himself into, by the Prorogation.

The Interruption of the means for the Preservation of his Protestant Subjects Impeacheth his Mercy too, and chargeth the King with Cruelty to his Subjects, in taking no better care for their Preservation, when under such Eminent Dangers; with a secret Insinuation that as he had stopped Justice against his Popish Subjects, so he was regardless of the Preservation of his Protestants Subjects.

What

What greater Malice could be incloſed in a Nutſhel? If Words were dubious and of a double Signification, and might be taken in a good ſenſe as well as bad, they ought not to be publiſhed by Subjects of their Prince; and when charged to be ſpoken or publiſhed in the worſe ſenſe to withdraw the Subjects Affections from their Prince, the Court cannot intend them ſpoken in any other ſenſe; that muſt appear upon the Evidence, which cannot be in this Caſe, becauſe they have not Pleaded the general Iſſue, nor Traverſed that Point.

But here the Words can bear no other ſenſe, but a direct Scandal to the King and his Government, in the Point of Prorogation of Parliaments.

That the City ſo underſtood them, is evident by the Petition, in that very Claule, where they ſay they were extreamly ſurprized at the late Prorogation. Why ſhould they be ſurpriſed? If the King had done nothing thereby but what was juſt and good for his People, they had often taſted of his Goodneſs, and could not be ſurpriſed at that.

It muſt then be ſome very ill thing in the Prorogation, that ſo extreamly ſurprized them, and filled them with ſuch Terors, as throughout the Petition they expreſs.

And they diſcover their Minds plainly, that the effects of the Prorogation were the Cauſes of their ſurpriſals, viz. The Interruption of the Proſecution of the publick Juſtice of the Kingdom, and of making the neceſſary Proviſions for the Preſervation of the King, and his Proteſtant Subjects; and in the next Paragraph they explain themſelves further, and call that a delay, which before they called an Interruption; that they were even Impatient of the leaſt delay, of the long hoped for ſecurity, whileſt they ſee the Kings Life invaded, and the true Religion Undermined and their Families and Innocent Poſterity, likely to be ſubjected to Blood, Confuſion and Ruin.

The Pannick fear and diſmal Conſequences, are charged upon the Prorogation.

And to what other purpoſe do they publiſh this ſevere Sentence upon the Prorogation with their diſmal fears, but to affrighten the King's Subjects, and beget the like fears in them? the natural Conſequence whereof is to withdraw their Affection, Oderunt quem Metuerunt Populi.

Mr. Recorder, thought he could not produce one Authority, that to Interrupt publick Juſtice, was ever uſed in a good or Juſtifiable ſenſe; yet endeavours to evade the Scandal of the Words by proper Anſwers.

1. That theſe Words are not ſpoken of the King, but of the Prorogation as Conſequences of it.

Reſp. Is not this Quibling? The Prorogation is only the Kings Act of Proroguing the High Court of Parliament.

And to charge the Acts of a King, or other ſubordinate Magiſtrate in execution of his Office, with Injuſtice, Folly or Inſanity, is the ſame thing as to charge the perſons themſelves.

2. (No ſaith Mr. Recorder) unleſs the action had been charged to have been done with ſuch Intention; but they do not charge the King.

And that tis ſo explained in another part of the Petition by ſaying, But that which ſupports them againſt deſpair, is the hopes they derive from your Majeſty's Goodneſs; that your Intention was by this Prorogation, to make way for your better Concurrence with the Councils of your Parliament.

Reſp. Evil Intention may make an Act otherwiſe good, to be bad and againſt Law, by Intendment of Law; the Intention is evil, and the perſon anſwerable for all the Conſequences thereof.

If a Man throw a great Stone over the Wall, and a perſon is killed, the Law adjudgeth it Murder; He cannot Juſtifie it by averring he had another Intention.

So

So in the matter of Scandal, if an unlawful Act or Crime, which purports Scandal, be charged upon a Person; It is no Justification or Excuse, to aver he did not charge the person nor his Acts, with doing it with an evil Intent; but as the Law supplies Malice in the Criminal, where the Act is unlawful, so it intends Malice in the Libeller, in a matter which in it self imports Scandal. Several Cases may be put to this purpose.

Roll. Ab. 71. To charge the Wife with Poysoning her Husband, Actionable though not alledged done voluntarily, or with an intent to Kill; the Law intends it.

In this Case, they charge that the King by his Prorogation interrupted the publick Justice of the Kingdom, and with the dismal Consequences, which in their Judgment would follow thereupon, and publish this to affrighten the whole Kingdom; and that they were near despairing of their safety, but hoped his Majesty did likewise intend by the Prorogation to make way, for his better Concurrence with the Council of his Parliament.

A pretty Compliment for so infamous a charge: And if it import any thing, it is a further Reflection upon the King, that he had not before Concurred with the Council of his Parliament.

But to fix the matter home, Mr. Recorder in the last place Justifies this Libel from the truth of the fact, That the publik Justice of the Kingdom, and finding out means for Preservation of the King and his Subjects, had received an Interruption by the Prorogation.

Resp. This toucheth to the quick, and is more than the City have averred in all their pleadings; they have nakedly represented their several facts, precedent to the Petition; and leave it to the Court to Judge, whether there be sufficient to Justifie them, to make and publish such a Petition.

But to aver it to be true, is to equal the Crime of the Petition, in charging the Prorogation with the Interruption of the publick Justice.

But I hope upon better Consideration, he will change his Opinion, and likewise upon the inference he made, that if true, it is no Scandal to Print and publish it to the Kings Subjects; for in both points he is apparently mistaken.

It is admitted there was a Plot, and such proceedings as are set forth against Delinquents; and that the King by his Proclamation and in his Speech expressed his sense of the Plot, and pressed the Parliament to proceed to Trial of the Lords in the Tower committed for the Plot, and that there are many such Bills depending in Parliament.

And it shall be admitted, that upon the Prorogation all these proceedings were staped: And if Mr. Recorder pleale, received an Interruption; and to say so is true.

But in this Case, if the City had been of an Opinion, that the Parliament upon the King's signification of his Pleasure, they should proceed to the Trial of the Lords, did not make such hast to Try them, as the City Judged was necessary, for the preservation of their Lives and Fortunes: And thereupon the City should have Petitioned the Parliament, to proceed to the immediate Tryal, of the Lords in the Tower, and thereby Charge them, that they had delaied them the publick Justice of the Kingdom, by not proceeding sooner to the Tryal of them, according to the Kings desire.

Mr. Recorder would not have averred the matter of delay of Justice to be true, and therefore no Scandal to the Parliament; but he would then have found out the difference between staping of Suits, and proceedings in Courts by the proper Judges, and the Debates and Interruptions of Common Justice, the latter are Unlawful and Criminal, and against the Duty of the Judges; but the former upon just Grounds are lawful, and many times in Prosecution of Common Justice.

And

And many times to proceed in such Cases would be great Injustice either to the Crimial, or the publick, where the Witnesses on either side are not ready, or for some other good Cause the Judges put off Causes till another time, or adjourn a Court before all the Causes be Tried: No Lawyer can truly say, that by the puting off the Cause, the Prosecution of Justice hath been Interrupted; or will it be any just Justification for him for such Scandal, that there were Causes depending before the Adjournment; The Acts of inferiour Magistrates, are not to be examined, censured and adjudged, much less scandalized by those that are under their Magistracy, that would let in Confusion and tend to the overthrow of all Government.

To say of a Justice of Peace, You have perverted Justice, Actionable; Seignior De la Ware and Pawlett, Trin. 37 El. More 409.

Mich. 1 Car. 1. Cro. 14. Sir John Isham versus Yorke; I have been with Sir *John Isham* for Justice, but could never yet get any at his hands but Injustice.

Trin. 7 Car. Cro. 223. W. Marsham versus Briggs; Sir *William Marsham* is but an Half-Ear'd Justice, he will hear but one side.

Mich. 8 Eliz. Rot. 1. Walsh was Indicted for scandalizing one Sir Robert Catline Chief Justice, and this Court, by saying, My Lord Chief Justice is incensed against me, I cannot have Justice, nor cannot be heard; for it is made a Court of Conscience. He was afterwards discharged upon the General Pardon, 8 Eliz.

They may be Judged by Superiours, but not by Inferiours.

Where the Common Law alloweth or authorizeth the staying of proceedings by Adjournment, or otherwise; to say the Act is done to delay or interrupt the publick Justice of the Kingdom, or that thereby the publick Justice of the Kingdom hath received interruption, is not only highly Scandalous, but absolutely untrue: For its according to the Rules of Common Law and the publick Justice of the Kingdom, and may be in promoting of Common Justice, and for the benefit of the Publick, and ought to be so intended when done according to Law.

For the Reasons of such Acts, much less the secret Intentions of the Judges, or of the Persons whom the Law hath entrusted with such Powers, are not to be examined, censured or condemned by any Subjects by any Corporation whatsoever.

Petitions may be rejected by either House of Parliament, and so may Bills too, though they have the greatest semblance of Common Benefit; yet this is no denial of Justice, nor to be scandalized under any such Notion: They may defer the Consideration thereof, or enter upon other Business, that is no delay or interruption of Common Justice.

The King may do the like, He may reject the Bills passed by both Houses, or he may advise upon them by these Acts, which the Law allows to be no interruption of publick Justice: The King may Adjourn or Prorogue the Court of Parliament. Anciently those Words were used and taken promiscuously, though now from the different effects they are differently used.

And Mr. Recorder owns, That the King is by Law entrusted with this Power, and 'tis happy for the Subjects he is so entrusted, it being for their benefit; which is a flat contradiction to his Position, That it is true that the publick Justice of the Kingdom is interrupted, or hath received an Interruption by the Prorogation: Because what is just and lawful, Secundum legem terræ, cannot be unjust or unlawful, which every Interruption of publick Justice is; and if the Act be not unlawful, it is no delay or interruption of Justice.

And if the Subjects cannot examine into, or censure these lawful Actions of their Princes, but must intend them to be upon just grounds, and for their benefit, and in order to their Common Safety; to charge their Princes Actions with the interrupting of publick Justice, and of the Means for his own and his Peoples preservation; and to publish this

to all his Subjects, is in Judgment of Law, a false, scandalous and malitious Libel; and if not sufficiently punished, where will it end?

To publish a Libel is in no case lawful, be the Matter never so true, nay, though the party who is Libelled be dead, and the degrees of the Crime, where against a private Person and where against a publick Person, appear in the Case cited by Mr. Solicitor in the Reports, fo. 125. And that it is against all Laws both of God and Man, and the Mischiefs there represented. In the Case of all Common Pleas the Offender shall be fined, and by the Statute of 13 Car. 2. all Natural persons are for the future disabled, and incapable of any Office or Place of Trust, where the Libel is against the King.

But where the Matter is false, and the Libel published against the King, to withdraw his Peoples affections from him, and that by the joynt Councils of a Corporation, there can little room for a Question remain; but they have broken their Original Trust for good Government, and misused their Liberty to Licentiousness.

Mich 21 & 22 Eliz Rot. 3.

How Criminal is it for private Subjects to deliberate of, and determine, and publickly to censure the Councils and Actions of their Princes, will appear by the Case of Stubs, 21 & 22 Eliz. Where the Case was, That a Treaty of Marriage being on foot betwen the Quen and Duke of Anjou, John Stubs published a Book called, The Discovery of a gaping Gulf, whereinto *England* is like to fall by another French Marriage; containing a dissuasive against the Marriage: And therein amongst other things chargeth, That this Marriage hath Sin in it self, and of its self only, for being against the Law of God. And in another place, That it opens all the Ports of Foreign Enemies, with several bad Reflections upon the Duke. This Book was delivered by Stubs to Hugh Singlton a Stationer to print, who caused it to be printed and published.

They were both Indicted for it in this Court, and the Indictment laid to be, with intent to hinder the Lawful purpose of the Quen and Duke to marry; and to animate and stir up the Quens Subjects to Rebellion; and to raise Discord betwen the Quen and her Subjects; and to subvert the good Government of the Kingdom.

Upon Not Guilty pleaded, for they had not the confidence to justifie, they were found Guilty, and Judgment given for cutting off their Right Hands upon the Statute 1 Eliz. cap. 6. for Libelling the Quen.

In this Case the Censuring of the Quens lawful purposes in a more private Matter than the administration of her Regal Office by common Subjects, not called to advise, is subversion of good Government within the Kingdom; and the publishing the Effects and Consequences thereof to be sinful and dangerous to the Kingdom, is a Libelling of the Quen and her Government within the Statute.

The Censuring of the Exercise of the Kings lawful Prorogation, and charging it with the interruption of publick Justice, is of a more dangerous Nature.

Every Natural person convicted of this Offence, is by the Statute of 13 Car. 2. disabled for any publick Trust; the proceeding against the Natural person could not be for want of Proof, it being transacted in their Council.

In this Process against the Whole, they have confessed it with the Aggravations laid.

If the King pass not a Bill which the City of London have a mind to, this rejection of such Bill shall in Print be published to all his Subjects, to be a denial of Justice.

If the King reprieve a Malefactor, it shall be a delay or interruption of publick Justice.

To pardon a Malefactor, shall be a denial of the publick Justice of the Kingdom.

So

So that the Tenor whereby the City of London hold their Franchiſe, and all their Liberties, will be quite changed and altered, without the aid of an Act of Parliament.

The City will no longer hold all their Liberties from the Crown quam diu ſe bene geſſerint, which was their ancient Tenure, reſerved by the Crown and the Laws of the Land upon their firſt Erection, but will gain abſolutum Dominium.

And the King ſhall Exerciſe no juſt Prerogative, but at their good pleaſure; otherwiſe they will blaſt him to his People, and alien their Affections from him.

I have done with the Caſe.

I have nothing more to offer.

I have at large proved, That the Corporation of London is a great Franchiſe and Liberty.

I have proved that Point of Forfeiture, and their demeanors towards the Crown; they ſtand in the ſame Level with other Cities and Burroughs, which be forfeited and ſeized.

I have preſented to the Court two Superlative Offences, both againſt their Prince and their Fellow Subjects, as well can be; Wherein they have exceeded all other Cities and Burroughs, and themſelves too in any former Age.

The Manner of their Pleading and Defence at the Bar, argue the Diſeaſe to be dangerous and infectious to other Cities and Burroughs, and of the Nature of the Kings-Evil, Incurable without the Kings Hands.

I have this Day brought them in Judgment before the Court, in order to their Cure.

Nothing remains for effecting of the Cure, but the Judgment of the Court for Seizure of the Franchiſe of London into the Kings Hands; which I demand for the King.

Mr

DE

Mr. *Pollexfen*, upon another day for the City, his Argument.

IN this Caſe, when I conſider the greatneſs and conſequence of it, That it affects the King, the Parliament, the Laws, the very Government under which we have lived, this great City of London, and all other Corporations and People of England, and their Poſterities, for ever. I cannot but be troubled that I ſhould be the Man to whoſe Lot it ſhould fall to argue it; but that which comforts me is, that your Lordſhip and the Court, upon whom the Judgment of this great Caſe depends, will help out my Defects, and according to what is required in the great Places you bear, take care and provide, that by your Judgment the ancient Government and Laws of this Kingdom receive no Damage or Alteration.

The King's Counſel have on their ſide only ſome general words out of old Records of Forfeitures and Seiſures of Liberties, which are of uncertain and doubtfull ſenſe; but there is not on their ſide produced any one Precedent, Judgment, or Opinion, to maintain the point in queſtion, viz. That a Corporation, or Body Politick, ever was determined, or diſſolved, or taken away for a Forfeiture. No, not in the maddeſt of Times, in the Times of Edward the 2d. and Richard the 2d. when the Tumults and Diſorders were ſo great, that they not only ſeized and took away Liberties and Franchiſes, but the Lives of Princes, Nobles, Judges, Lawyers, and all that ſtood in their way: In thoſe times, though they have hunted and ſearched with all diligence, not one inſtance of a Corporation taken away, or diſſolved by a Forfeiture is cited. So that from hence I hope I may ſafely conclude, that I argue in this caſe for the old and known Laws, as they have been ever practiſed through all Ages, and againſt that which never hath been practized or known, which is a great Encouragement to me.

The Pleadings being very long, I ſhall only repeat ſo much of them as I uſe, when I come in order to ſpeak of them.

I. The firſt thing proper to be ſpoken to is the Information it ſelf, and therein I make this Queſtion:

Whether as to that part thereof that chargeth the Corporation with uſurping upon themſelves the being of a Corporation, whether that be properly brought againſt the Body Politick, as this is, or ought to have been brought againſt the particular Perſons?

I do agree, that as to the other things mentioned in the Information, the having Sheriffs, Justices, &c. The Information is properly brought against the Corporation: And I do also agree, that it may be good as to those things, though bad and insufficient as to the charging the Corporation with Usurpation of their Being, without lawfull Warrant or Authority. And that I may come singly to this Question, I do put out all the other Franchises in the Information, and take only what concerns this point, and then the Information, as to this point, chargeth,

> That the Mayor, Commonalty, and Citizens of *London*, by the space of a Month last past before the Information, did use, and claim to have and use, without any Warrant or Regal Concession within the City of *London*, the Liberty and Franchise following, *viz.* to be a Body Politick *Re, Facto, & Nomine*, by name of Mayor, and Commonalty, and Citizens, and by that Name to plead and be impleaded; which Liberty, Privilege, and Franchise, the same Mayor, Commonalty, and Citizens, upon the King by the time aforesaid have and yet do usurp.

This is the Substance of the Information as to this point; and,

> Whether this Information thus brought, as to this matter, be sufficient in the Law, upon which a Judgment can be given, or ought to have been brought against particular Persons, is the Question.

I conceive it ought to have been brought against particular Persons, and is insufficient as it is, and that no Judgment can be given upon it, supposing the Defendants had demurred, or pleaded nothing to it.

To make out the Insufficiencies, I desire to consider what it imports:

1. The very bringing the Writ, and exhibiting the Information against the Corporation, imports and admits the Mayor, Commonalty, and Citizens, to be a Body Politick, capable to be sued and impleaded, respondere, & responderi, otherwise there is no Defendant, no Person in Court, against whom the Suit is brought. It is not enough that the Person sued be a Person by supposition, or a pretended Person, but none in reality. If a Writ or Information be brought against a Baron and Feme, this must admit that they are Baron and Feme really and truly; and if there be any thing after in the Writ or Information, that shews that they are not truly and really Baron and Feme, but that they do wrongfully and unduly take upon them to be Baron and Feme, when in truth they are not, this would be contrariant and repugnant, and abate the Writ or Information. The like is supposed by the bringing the Writ or Information against the Body Politick; it supposeth and affirmeth them really and truly to be such,

ſuch, and the ſubſequent Affirmation that they uſurped, ſo to be, and are not ſo really, is contrariant and repugnant.

2. When in the Information it is alleadged, that the Mayor, Commonalty, and Citizens, the Liberty, Privilege, and Franchiſe of being a Body Politick Re. Facto, & Nomine, and to be ſued and impleaded, upon the King have and yet do uſurp.

To uſurp or doe any Act of Neceſſity, imports and admits a precedent exiſtence of the Perſon that doth uſurp, or do the Act, to the Act done. Particular Perſons may uſurp, and take upon themſelves that which they have no right unto: The Perſons that doe the Act did before exiſt, and had a Being. And when a Corporation is ſaid to uſurp, it of neceſſity muſt be ſuppoſed to have a precedent Being. The ſenſe of Uſurpation in a Quo Warranto, is the Subject's taking upon him Franchiſes without Warrant.

By Lord Coke ſaith, That Uſurpation in the Common Law hath two ſignifications: Inſt. 1. 277. b

1. The one when a Stranger preſents to a Benefice, and his Clerk inſtituted and inducted, he gains the Advowſon by Uſurpation.

2. The other when any Subject without lawfull Warrant doth uſe any Royal Franchiſes, he is ſaid then to uſurp upon the King.

So that an Uſurpation ſuppoſeth of neceſſity a Subject or a Perſon precedently in eſſe, that uſeth the Franchiſe, or that doth uſurp. That which is not in eſſe, that hath no exiſtence, cannot uſe any Franchiſe, cannot uſurp. The very alleadging that they uſurp, doth admit of neceſſity an Exiſtence precedent in the Corporation, ſuch as can uſurp, or Act, and therefore this Information is inconſiſtent with it ſelf.

3. But another reaſon to prove that it ought to be againſt particular Perſons, and cannot be againſt the Body Politick, is drawn from the Judgment that muſt be given upon this Information, if Judgment for the King. The Judgment muſt have two things in it.

1. To damn the Corporation, Quod penitus extinguatur & excludatur from being a Corporation for the future; for being wrongfully uſurped, it cannot be continued: A Judgment to continue Wrong and Uſurpation can never be a right Judgment.

2. A Fine to the King for the uſurping it for the time paſt.

This Judgment may and ought to be given, where the Information is againſt particular Perſons, for uſurping upon themſelves to be a Corporation, and they ſhall be fined and impriſoned; but this cannot be where the Information is againſt the Body Politick; for by the Judgment the Body Politick is extinguiſhed and diſſolved, and no Fine can be impoſed upon that which is not: So that hereby the King muſt loſe his Fine, which the particular Perſons uſurping ought to pay, and the Law is agreeable always to it ſelf, and the means anſwerable to the end. I

ſuppoſe no man will affirm, that where a Suit or Judgment is againſt a Corporation, that the Fine or Execution ſhall be againſt all, or any particular Member.

For the Precedents and Authorities in this point,

1. I do agree, that there be Precedents in the Crown Office of Quo Warranto's brought againſt Corporations in ſuch manner as this is brought, for uſurping to be a Corporation, and to claim divers other Liberties.

P. 2 El. r. 1. Quo Warranto againſt the Bailiffs and Burgeſſes of Stratford, for claiming to be a Corporation, and to have divers Liberties and Franchiſes, thereupon a Plea put in, and a confeſſion of their Claim by the King's Attorney.

M. 3 & 4 El. r. 4. The like againſt the Corporation of Reading, the like Plea and confeſſion, the very next Term after the Information filed.

H. 14 Jac. r. 37. Againſt the Corporation of Horſham, a Plea and confeſſon by the Attorney.

H. 19 Jac. r. 26. The like againſt the Corporation of Dover, but nothing done upon it beſides Plea put in.

H. 20 Jac. The like againſt Bath, a Claim put in, and confeſſed.

H. 20 Jac. r. 58. The like againſt Brackley, and a Noli proſequi.

T. 3 C. 1. r. 22. The like againſt Baſton, a Claim put in, and confeſſed.

T. 2 C. 1. r. 47. The like againſt New Sarum, Imparlance, and nothing more upon it.

T. 6 Car. 1. r. 43. The like againſt Bridgport, Claim and Confeſſion.

M. 2 C. 1. r. 36. The like againſt Biddeford, a Claim and Noli proſequi.

M. 8 C. 1. r. 42. The like againſt Witcomb; they plead themſelves a Corporation by another Name, and traverſe the Name in the Information; nothing more on the Roll.

And it is probable there may be more like theſe, but if of any authority, they are for me, and not againſt me.

1. For that they all being for claiming other Liberties, as well as to be a Corporation, and being good and ſufficient as to the other Liberties and Privileges that the Corporation claims; though inſufficient for this of claiming to be a Corporation, they muſt be proceeded upon, if the Attorney pleaſeth.

But is any to be found where only the claiming to be a Body Politick, and nothing elſe; or if other things queſtioned, yet only proceeded in as to this particular of claiming to be a Body Politick, as in this Caſe? That will be like.

2. In all theſe nothing is done; a Claim or Plea put in, and that confeſſed, or Non proſſ. or not proceeded upon to Judgment. Perhaps not proceeded in becauſe inſufficient, and ſo are Authorities

rities for me: For there being ſo many of theſe, which are either Non proſſ. or not proceeded in, perhaps the Reaſon might be, becauſe inſufficient in the Law, as to the Corporation, and ſo are Authorities for me in this Caſe. But one there is found,

Quo Warranto verſ. Bailiffs and Burgeſſes of New Malton in Yorkſhire; Quo Warranto they claim divers Liberties, as Courts, Markets, and others, and amongſt the reſt, to be a Body Politick. They put in a Plea, and make their Claim by Preſcription; Iſſue's joined, and tried by Niſi prius at York and found againſt the Corporation, and a Judgment entred; T. 6 Jac. r. 3.

Quod Libertat' & Franchefii predict' in manus Domini Regis capiantur & ſeiſiantur, & quod Ballivi & Burgenſes capiant' ad ſatisfaciend' Dom' Reg' pro Fine ſuo pro Uſurpacion' Libertat' & Franchefii predict'

There is no mention of this Caſe in any Book or Report as far as I can learn; ſo that this paſſed ſub ſilentio.

Next, How can this Judgment be good?

1. How can that be a right and lawfull Judgment, which ſhall be given for the continuing a thing that is by the very Judgment adjudged to be unlawfully uſurped, and a Fine for it, it is directly oppoſitum in Objecto.

2. How can the Corporation be ſeized into the King's hands? Extinguatur & excludatur is proper; the Corporation cannot be in the King.

3. How could the Bailiffs and Burgeſſes be fined, when they were vaniſhed and gone there is no Corporation in being; that which is laid upon a Corporation cannot be levied upon the particular Members.

I have made enquiry after this Borough of New Malton; it is a ſmall Borough, within the Manour of the Anceſtours of my Lord Eure; it did anciently ſend Burgeſſes to Parliament, but from the time of King Ed. 1. to the beginning of the Long Parliament 1640. it ſent none then; upon Petition a Writ ordered, and they then and ever ſince have choſen Burgeſſes; my Lord Eure being Lord of the Manour, and offended with them, did proſecute this Quo Warranto, and they having neither Lands, Revenues, or Eſtates to defend themſelves, he eaſily prevailed, they never in truth being incorporate, nor having any Charter. But that which I give for anſwer to theſe Precedents is,

1. They are all, where not only the being of the Corporation, but alſo divers other Liberties were in queſtion; ſo that the Informations were good in part, and not worth the while to queſtion whether good, as to that part of their being a Corporation. The Fine upon them for uſurping the other Liberties, would have been more than they could bear or pay.

2. That this is but one Judgment, and in a caſe of a ſmall Borough, and that Judgment, as entred, not agreeable, but inconſiſtent with the Rules of Law or Reaſon. The Body Politick

tick could not be seised into the King's Hands, but whenever a Judgment is given for the King, for a Liberty which is usurped, or extinct in the Crown. The Judgment must be quod extinguatur, and that the Person that claimed them deinceps Libertat' & Francheſiis predict' nullatenus intromittat', ſed ab uſu earund' a modo omnino ceſſat quodque, the Person that used them pro uſurpacion' Libertat' & Franch. predict' ſuper Dominum Regem capiat' ad reſpondendum dict' Dom' Reg' de Fine ſuo pro Uſurpatione Libertat. & Franch. predict'. That this is the Form, C. En. 559. a 537. 527. b

3. That this Judgment of New Malton passed ſub ſilentio, for there is no mention of it in any Book, nor doth it appear that ever the Question was moved or debated. And for Precedents in matters of Practice and Proceſs, they are of Authority; but in point of Law, unleſs they have been upon Debate, are of little authority to prove what the Law is. Rep. 4. 94. Slade's Caſe, L. 5. E. 4. 110.

But on the contrary, all the Precedents that are in any printed Books of Informations, where brought to queſtion, whether Body Politick, or not, are againſt particular Persons by name:

C. En. 527. Againſt Chriſtopher Helden, and others.

Pal. 9. fo. Quo Warranto againſt Cuſack, and others.

Rol. 2. r. 113, 115. Quo Warranto againſt the Virginia Company

Rol. 2. 455. was brought againſt Nic' Farder, and others, Quo Warranto they claimed to be a Corporation?

Some of them pleaded inſufficiently, upon which there was a Demurr, and a Queſtion, How the Judgment ſhould be entred? for that the Maſter and chief of the Company were left out of the Quo Warranto.

By which it appears, that it ought to be brought againſt the Maſter, and particular Members, by Name.

Next for the expreſs Authorities in this Caſe, to prove it cannot be againſt the Corporation.

Rol. Rep. 2. 15. is expreſs, That if a Quo Warranto be brought to diſſolve a Corporation, the Writ ought to be brought againſt the particular Perſons, for the Writ ſuppoſeth that it is no Corporation.

The difference there taken, when the Attorney General ſuppoſeth the Defendant to be a Corporation, otherwiſe when he queſtions them as Inhabitants of a Hill. then they ought to enable themſelves, they muſt then ſhew themſelves a Corporation, alſo prove it.

Fol. 168. My Lord Hales, in his Common Place Book in Lincolns-Inn Library, ſaith thus:

Nota, &c. Quo Warranto ſoit port pur uſurper de un Corporation ſerra port verſ. particular Perſons, quia in diſaffirmance del Corporation, & Judgment ſerra done que ſerra ouſte; mes ſi le quo Warranto ſoil port pur Liberties claim per Corporation, ſerra port verſ. le Corporation.

This

This is poſitive.

This, if it were only my Lord Hales's Judgment, were of no little Authority, but I think it is a Report taken upon the Caſe of the Quo Warranto againſt Cuſack, and others.

But Mr. Attorney finding, as I believe, that all the Precedents to be againſt him. For in them all there are either non Proſſ. or no Proceedings to Judgment, the Cauſes whereof, or at leaſt ſome of them, probably might be the Inſufficiencies of theſe Informations.

And finding alſo the Authorities in Print which have been cited to be all againſt him, and none for him, endeavoured to maintain the Information as brought not againſt the Corporation, but againſt the Citizens or Inhabitants of the City in their Natural Capacities, and to that purpoſe cited the Caſe, C. En. 537. of a Quo Warranto againſt the Inhabitants of a Village, Quo Warranto they claimed to be a Body Politick.

And argued, That a Quo Warranto lyes againſt the Cives of ſuch a City, or Burgenſes or Tenants.

This ſeems to be rather a ſudden conceit, and altogether undigeſted, and not well conſidered.

But in anſwer thereunto, and to prove that this Writ is brought againſt the Defendants as a Corporation, and cannot legally be taken in any other Caſe.

If a Mayor and Commonalty plead that they are ſeized in Fee, they need not ſay in Right of their Corporation, the Name ſhews them to be a Corporation, it need not be alledged. Leo. 1. 153.

An Action there brought by the Guardians and Fellowſhip of Weavers; the Book ſaith, That they need not ſet themſelves out to be incorporate, the Name ſhews it ſo of Cities, ſaith the Book. Hob. 211.

So then, when the Writ is brought againſt a Mayor and Commonalty, or Mayor, Commonalty and Citizens, the Law takes notice of them to be a Corporation, and the Writ againſt them as ſuch; the Name ſhews it.

But againſt Inhabitants of a Village, a Writ brought by that Name that cannot be taken to be other than Inhabitants, the Name ſo ſhews it; and in ſuch Caſe, ſome of the Inhabitants, by Name (viz.) A. and B. appear in Perſon, in their own, and Names of the reſt of the Inhabitants, and plead, and are Defendants, Co. En. 537. So did they, as appears in that Precedent. No appearance ever was of Inhabitants in other manner.

But in this Caſe here are no Perſons that do appear by Name, but the Corporation appear, and make an Attorney under their Common Seal. The Corporation, and no particular Perſons, are the Defendants before you, or elſe you have no Defendants before you; for there is none appearing in Perſon, here is no Defendant, nor none againſt whom you can give Judgment;

Judgment; but all the whole Proceedings vain and against no body.

So that if we should admit, as Mr. Attorney argues, That this Information is not brought against the Corporation; then there can be no Judgment for want of Defendants appearing in their Natural Capacities; you must have it against the Corporation, or no body. A Mayor cannot be but where there is a Corporation; therefore this Notion impossible, as I conceive.

So that if there were nothing else in the Case, if the Information be ill brought, they can have no Judgment against us.

2. But admit that the Information as to this Point be sufficient, Then I proceed to consider the other parts of this Case, The Plea.

That contains the Defendants Title (viz.) That she is a Corporation time out of mind, and many Confirmations by Acts of Parliament and Charters, It is not denied but that the Title made by the Plea is good.

But next the Replication, that contains,

(1.) An Issue upon the Prescription (viz.) That the Citizens of *London* have not been time out of mind a Corporation by Name of Mayor, Commonalty, and Citizens, *&c.*

(2.) A Pleading over, That the Mayor and Commonalty and Citizens taking upon them (*assumentes super se*) to be a Body-Politick, and to have Power to make By-Laws.

1. Colore inde, but for their private Gain, & contra fiduciam per Dominum Regem & Leges hujus Regni in them reposed, took upon them to raise Money upon the King's Subjects by colour of an Ordinance by them de facto made, and in Prosecution of this usurped Power.

17 Septemb. 26 C. 2. The Mayor, Commonalty and Citizens in their Common Council assembled, Published a Law for Levying Money upon the King's Subjects that came to the Markets within the City. (viz.)

De qualibet Persona, for every Horse Load of Provisions brought into any Publick Market within the City to be sold, 2 d. a Day, for every Dozen of Provision 1 d. a Day, for every Cartload drawn with not more than three Horses 4 d. a Day, if with more, 6 d. a Day.

That if any refused to Pay, he should be amoved from his place in the Market.

That by Colour of this By-Law, the Mayor, and Commonalty and Citizens have Extorted great Sums of Money for their own private Gain, amounting to Five thousand Pounds per Annum.

2. And farther, That whereas there was a Session of Parliament holden 21 Octob. 32 C. 2. and continued till the 10th of Jan. 82. and then by the King Prorogued to the 20th of that instant January.

The

The Mayor, Commonalty and Citizens, Jan. 13. in their Common Council aſſembled, malitioſe, adviſate, & ſeditioſe, abſque legali Authoritate, in ſe aſſumpſerunt ad cenſendum & judicandum dict' Dom' Regem nunc, & Prorogationem Parliamenti, by the King prorogued; and in the ſame Common Council, Vota & Suffragia ſua dederunt & ordinaverunt.

That a Petition ſub nomine the Mayor, Aldermen, and Commons of the City of London, in Common Council aſſembled, to the King ſhould be exhibited: In which Petition it was contained,

That by that Prorogation the Proſecution of the publick Juſtice of this Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and his Proteſtant Subjects, had received Interruption.

And that the Mayor Commonalty, and Citizens, in the ſame Common Council, did unlawfully, malitioſe, adviſate, & ſeditioſe, with intent that the ſame Petition might be publiſhed and diſperſed among the King's Subjects, to induce in them an Opinion, that the King had by that Prorogation obſtructed the publick Juſtice, and to incite hatred againſt the King's Perſon and Government, and to diſturb the Peace, did order that Petition, containing the ſaid ſcandalous matter, to be printed, and thereupon to thoſe ill Ends and Purpoſes they cauſed it to be printed and publiſhed:

By which the Mayor, Commonalty, and Citizens, the aforeſaid Liberty and Franchiſe of being a Body Politick forisfecerunt, and after, by the time in the Information, have and yet do uſurp it.

Before I come to the matter, I would ſpeak to the Pleading herein, and in the ſubſequent Surrejoinder: And for the Pleading in it, I think it is as ſingular and unprecidented as the Matter of it is.

This Replication, ſuppoſing the matter had been the Act of the Body Politick, and good and ſufficient, yet, as pleaded, is inſufficient, and not warrantable by any Law or Practice ever known. It contains,

1. An Iſſue, viz. no Corporation time out of mind.
2. Two Cauſes of Forfeiture of the Corporation, admitting they once were a Corporation.

So that though the point in queſtion be but one, viz. whether we are lawfully a Corporation or no Corporation, though the Plea is ſingle, that we are a Corporation by Preſcription time out of mind, yet here is to try this point,

1. An Iſſue.
2. A double Plea, alleadging two Cauſes to avoid it for a Forfeiture.

This I conceive cannot legally be done, though in the King's Caſe. I do agree, the King hath great Prerogatives in Plea-

dings, and as far as ever they have been allowed or enjoyed, let them be so still; but that the King can to the same matter both take Issue, and also plead over at the same, that I deny.

It is most reasonable, that the Law should be carefull to preserve the King's Rights; but on the other side, I think it is not reasonable, that the Law should admit or allow as legal any way of Proceeding that should destroy or render the Subjects right indefensible, be his right as good as it may be. If so be that Mr. Attorney may both take Issue upon the Fact, and also plead over, I would, by your leave, ask how many Issues, and how many Pleas over the King's Attorney may have?

Suppose the King bring a Quare Impedit, or Writ of Right, or any other Action, the Defendant makes his Title, which is usually done, by many Grants and Conveyances from one to another, to bring it to himself.

May the King's Attorney now take as many Issues as facts issuable, plead as many Pleas as he pleaseth, and all this simul & semel? 'Tis true, that in this case Mr. Attorney hath assigned only two Breaches, or Causes of Forfeiture; but he might, if he had pleased, by the same Reason, have assigned 200. If this may be, Are we not all at Mr. Attorney's Mercy? If this may not be, then how many Pleas? Is it in Law defined?

In favorem Vitæ a man may plead a special Plea, and plead also not guilty, but not several special Pleas; but that there is any such Prerogative for Mr. Attorney, in Suits betwixt the King and his Subjects, I can find no Instance or Authority for it.

For though it be true, as I have said, that the King hath great Prerogatives in pleading, yet it is as true that this is not boundless; but that if in the King's Writs there be mistakes, or his Writ or his Action misconceived, he shall be bound by it in like manner as Subjects are or shall.

Com. 84. a 236. a

Partridge against Strange, and in the same Book in my Lord Berkley's Case, it is expressly said, That though the King hath many Prerogatives, concerning his Person, Debts, and Duties, yet the Common Law hath so admeasured his Prerogative, that it shall not take away or prejudice the Inheritance of any.

The King hath a Prerogative that he may wave his Demurrer and take Issue, or wave his Issue and demurre upon the Plea:

Com. fol. 236.

But, saith the same Book, he must doe it the same Term, not in any other Term, for then he may doe it *in infinitum*, without end, and the Party hereby may lose his Inheritance; and for that the Common Law will not suffer the King to have such a Prerogative.

These are the words of the Book.

And in the point that this Prerogative must be made use of the same Term, and that the King's Attorney cannot vary in another Term, and wave his Issue, is 13 E. 4. 8. Bro. Prer. 69. 28 H. 8. 2.

So

So in making Title to a Quare Impedit, he at the end of the Term waved his firſt Title, and made another.

But it is true alſo, that as to the point of Waving Demurrers, and taking Iſſue in another Term, there is authority that he may ſo doe; but whether it may be done or not in another Term is not material to our caſe: But the uſe I make of theſe Caſes is to prove that the King's Attorney ſhould not have both together ſimul & ſemel, as in this caſe he hath done; he muſt wave one before he can have another Plea. Rex verſ. Bagſhaw. Cr. 1. 347.

For thoſe Debates about his varying his Plea by waving his Iſſue and demurring, or waving his Demurrer and taking Iſſue, ſignifie nothing, if he may in one Plea, and at the ſame time, take Iſſue, and demurre, or plead over to the ſame matter or point, as is done in this caſe; therefore thoſe Books ſtrongly prove, that the Prerogative that the King hath is by waving or relinquiſhing one, and chuſing the other; and therefore not to have or uſe all together and at once, as is done in this caſe.

The King ſhall be bound by one Iſſue, he ſhall not have divers. 9 H. 4. 5.

So that as this Replication is at the ſame time ſimul & ſemel to the ſame matter, to take Iſſue that we were not a Corporation time out of mind, and to plead two matters of Fact for Forfeiture, is the firſt attempt that ever was of this kind, and in its conſequence confounding the right of the Subject, and leaves him perhaps only but a colour of Law, but moſt difficult, if not impoſſible by it to be defended, let his Right be what it will, if Iſſues and Pleas without number may be by the King's Attorney joined and pleaded, and the Subject muſt anſwer, the very charge beſides will undoe the Subject, and wreſt him out of his Eſtate by the Law that ſhould preſerve him. This point, if I miſtake not, will deſerve conſideration, if it be new, and the firſt Project (for ſo I beg leave to call it) of its kind, for I know no Book or Inſtance of the like, unwarrantable by old Laws and Rules of Pleading. The old Laws and ways are good and ſafe,

Eventos varios Res nova ſemper habet.

Perhaps the conſequence and miſchiefs attending this way of joining Iſſue, and at the ſame time pleading over as many Pleas as Mr. Attorney pleaſeth, are as great as any other in this caſe, and not leſs to be minded or regarded. As of the one ſide great are the King's Prerogatives, and moſt neceſſary to be preſerved, and maintained; ſo it cannot be denied but that the Law hath ſet Limits and bounds, which muſt be kept and obſerved in pleading, which is the Method and Mean of preſerving and determining Rights, without which no man can be preſerved by the Law.

But supposing that several Causes or Forfeitures may be assigned, yet they must be all Facts done at the same time, or they confound one the other; for if the first Fact was a Forfeiture, thereby the Corporation was determined, and at an end, and the subsequent could not be the Act of the true lawfull Corporation, for that was forfeited, determined, and gone, by the precedent Forfeiture: And if so, that it was forfeited and gone by the precedent Act, viz. the making the Ordinance Septemb. 17. 26 C. 2. Then how could it act and forfeit it self six years after, in the Year Thirty two? This seems impossible.

But to avoid this:

Mr. Attorney in his Argument doth hold, That though the Act be a Forfeiture, yet till there be a Judgment, or something on Record to determine the Corporation, (and in this case the Judgment to be given shall doe that Work,) till such Judgment the Corporation remains. Then taking it as Mr. Attorney will have it, and as the truth is, supposing a Forfeiture, untill that Forfeiture appear on Record, or that there be some Office or Inquisition that finds it, and that return'd, and on Record, were it of any Estate in Lands, Tenements, Hereditaments, or Offices, it is not determined or vested in the King, but continues. This is quite contrary and contradictory to all that you have done, and the very Foundation of this Quo Warranto; for if you admit, as then you do, that the Forfeiture ipso facto, did not determine, but that it must be this Quo Warranto, or Judgment upon it, that must determine the Corporation, and that the Corporation, notwithstanding such Act, was or is in being; then they have not usurped upon the Kings; they are the same Corporation they were; they have the same power to act they had; they have the same Warrant and Right they had, only subject to a Judgment against them, that may be given hereafter, for a Fact already past; for since that an Usurpation is a sortious and wrongfull using a Liberty or Franchise upon the King, without lawfull Authority. Then

Supposing such an Act of Forfeiture doth not ipso Facto determine or dissolve, but a Judgment, or some other Act of Record, must first be had, before such dissolution; then till such Judgment, or Act of Record, they are lawfully a Corporation in being, and their lawfull Warrant remains, and they did not, nor could so long usurp their Being, and then hereby is your own Information destroyed and abated: For there you say that they did by the space of a month, without any Warrant, use and usurp the Liberty to be a Corporation. But hereby you grant that it was not used unlawfully, nor usurped, but notwithstanding the Forfeiture the Corporation lawfully continued, unless there had been some Judgment, or other Act on Record to determine it.

This I rest upon as impossible to be avoided.

Is it possible that a Corporation or Body Politick can at the same time be lawfully and rightfully such, and not lawfully and right-

rightfully ſuch? Can right and wrong be the ſame? Can the ſame thing rightfully be or have its Being, and at the ſame time not rightfully be or have its being? Can we poſſibly be at the ſame time, viz. the time mentioned in the Information, a lawfull Corporation, and yet an uſurped or unlawfull Corporation? Could we then have a lawfull and rightfull Authority to be a Corporation, and at the ſame time have no lawfull or rightfull authority to be ſo?

Theſe ſeem to be contradictions, and if ſo, are the moſt difficult of all things to be believed or impoſed; therefore to be plain in this matter, either tell us that we are yet till Judgment a Corporation or Body Politick lawfully and rightfully, or not. If you ſay we are, then as yet we are no unlawfull Corporation, nor have uſurped to be one, as in your Information and Replication you have alleadged. We have not then unlawfully taken upon us to be a Corporation, and therefore cannot have Judgment againſt us, or be fined for having or being that which we lawfully have or be, as you now admit we are, conſequently you muſt go ſome other way, you have deſtroyed your own Information, and can have no Judgment upon it.

But perhaps this conceſſion of Mr. Attorney, that the old and lawfull Corporation and Body Politick is ſtill in being, and ſhall ſo continue, till by Judgment or Matter on Record determined, may only be ſome ſudden thoughts; for not only the Matter, but the whole Proceedings in this Suit being at leaſt unexperienced, and perhaps much out of practice, it might eaſily happen, that in an haſty Proceedings all things might not be thought on, nor all the Objections or Inconveniencies foreſeen, and perhaps the conſequence of the Poſition, that a Miſcarriage, or doing an unlawfull Act, ſhould ipſo facto forfeit the Body Politick or Corporation, might make a man ſtart, and caſt about how to avoid it, and flying from one danger run into another. Theſe are things ordinarily happening, and perhaps have in this caſe happened, and were the cauſe of this confeſſion, that the old and lawfull Corporation is yet in being, which is contrary to the whole frame and ſcope of both the Information and Replication, and probably never thought on or intended when the Information or Replication was made, being quite contrary and inconſiſtent with the frame and foundation of them both,

If it be holden according to this conceſſion, that the old and lawful Corporation was not by the ſuppoſed Acts of Forfeiture diſſolved and determined ipſo facto, but remained and continued lawfully a Corporation, and yet is ſo; then we have not uſurped, but are a lawful Corporation during the time in the Information, and not as therein ſuppoſed by Uſurpation, and without lawful Authority; and thereby the Information confounded and abated.

But

But supposing, according to what the Information and Replication suppose,

That the Acts of Forfeiture did ipso facto dissolve and determine the Corporation, for they will (at last I doubt) come to that again; for this present thought that it shall be forfeit, but not dissolved or determined till Judgment, will be subject to almost all the same inconveniencies; for when Judgment given, the Forfeiture must relate to the time of Offence, and to avoid all mean Acts as in other Cases it doth. But to pass over.

(3.) Supposing the Information good, the Replication good, and the Matters alledged for Forfeiture to be as in the Replication alledged.

The next thing I pray leave to speak unto, is,

Whether the Matter alledged in the Rejoynder be not sufficient to justifie or excuse the two Facts alledged for cause of Forfeiture.

I conceive they are.

The Pleadings here must first be stated,

(1.) As to the Ordinance or By-Laws for the Toll in the Markets. As to that the Defendants in their Rejoinder have alledged.

That the City of London is, and was always the capital and most populous City of the Kingdom. That there are and always have been great publick Markets within the said City. That the Mayor, Commonalty and Citizens, are and always have been seised of those Markets in their Demesne as of Fee; and at their own proper Charges provided Market-places, Stalls, Standings, and other Accommodations for Persons coming to those Markets; and Overseers and Officers for better regulation and keeping good order, and cleansing the same. That for defraying those Charges, they have, and always had and received divers reasonable Tolls, Rates, or Sums of Money of all Persons to those Markets coming, for Stalls standing, and other accommodations by them had for exposing to Sale their Victuals and Provisions in those Markets. That the Freemen of the City of London are numerous, above fifty Thousand. That there hath been time out of mind a Common-Council, consisting of the Mayor, Aldermen, and certain Freemen annually Elected, not exceeding the number of two Hundred and fifty, called the Commons. That there is a Custom within the City, that the Common-Council make By-Laws and Ordinances for the better Regulation and Government of the publick Markets, and for the appointing convenient places and times when and where within the City the Markets shall be kept; and for the assessing and reducing to certainty reasonable Tolls, Rates, or Sums of Money to be paid by Persons coming to the same Markets, for their Stalls, Stations, and other Accommodations by them had for exposing to Sale their Victuals as often as, and when to them should be thought expedient, so as their Ordinance be useful to

the

the King and his People, conſonant to reaſon, and not contrary to the Laws of the Land.

That this Cuſtom is confirmed by Mag. Char. Stat. 1. E. 3. Stat. 7. R. 2.

That after the Burning and Rebuilding London, and the alterations thereby made, Controverſies did ariſe within the City concerning the Markets and the Tolls. That thereupon Sir William Hooker, then Mayor, and the Aldermen and Commons in Common Council aſſembled, did make an Ordinance, Entituled, An Act for the Settlement and well ordering the ſeveral Publick Markets within the City. By which reciting, That whereas for accommodation of Market-people, with Stalls and Neceſſaries for their ſtandings, for cleanſing and paving the ſame, for defraying incident Charges about the ſame, reaſonable Rates had always been paid. To the end the Rates to be paid might be aſcertained, That the Market-people might know what to pay, and the Officers what to take; to avoid extortion, it was ordered there ſhould be paid by the Market-people for their Stalls, Standings and Accommodations in the Markets,

For every Horſe-load of Proviſion under publick ſhelter 2 d. a day; for every Doſſer 1 d. a day; for every Cart-load drawn with not above three Horſes 3 d. a day; with more Horſes 4 d. a day, and upon refuſal to pay to be removed. Then they aver that theſe Rates are reaſonable. That they are all the Rates that are paid by ſuch Market-people to the uſe of the City. That theſe Rates they have received ſince the making theſe Ordinances. That there is no other Ordinance for raiſing Moneys for ſuch Proviſions expoſed to Sale in their Markets in any manner made.

To this Rejoinder Mr. Attorney hath ſur-rejoyned, and taken it by Proteſtation, That the City were not ſeiſed of the Markets, nor at their own Coſts provided Stalls and other accommodations; and that the Rates by the Ordinance appointed were not reaſonable. For Plea ſets forth, An Act of Parliament made 22 Car. 2. Enacting, That to the end apt and convenient Places within the City ſhould be put out for Buildings, and keeping the Markets; and that the Royal Exchange, Old-Baily, and common Gaols and Priſons within the City ſhould be made more commodious for the enabling the City to do theſe things, they ſhould have a Duty out of Coals imported betwixt May 1670. and Mich. 1687. into the Port of London, 12 d. per Chaldron; which Duty they have accordingly received, amounting to a great Summ, and notwithſtanding that Duty, without Title or Right, the Defendants made the By-Law for their private Gain, abſq; hoc, that the Mayor, and Commonalty, and Citizens have time out of mind had, or accuſtomed to have,

Tolneta ratas ſive denariorum ſummas per ipſos Majorem Communitatem ac Cives Civitatis predict' ſuperius ſuppoſit' fore per præfat' legem ſive ordinationem predict' aſſeſſ. & in certitudinem

dinem reduct' prout per placitum superius rejungend' suppo-nitur.

The Defendants they rebutt and say, That they have al-ways had reasonable Tolls, Rates or Summs of Money of all Persons coming to their Markets to sell their Provisions for their Stalls and accommodations: Et de hoc ponit se super pa-triam: Le Attorney Demurs.

Upon his Pleadings the Questions are, Whether the matters alledged by the Defendants, in Justification of the Ordinance, or By-Law, be a good Justification in Law or not. If it be, Mr. Attorney in his Sur-rejoinder hath given no answer to it at all, he hath neither confessed it, nor denied it. The Rejoynder saith, That the Defendants are and always have bin seised of the Markets in Fee.

That they at their Charge provided Market-places, Stalls, Standings, and Officers for the accommodations of the Mar-kets, and cleansing them. That for defraying those Charges they have always had divers reasonable Tolls and Rates for Standings and other accommodations. That the Common-Council have, as often as expedient, always made Ordinances for regulating those Markets, and for assessing and reducing to certainty reasonable Tolls, Rates and Summs of Money to be paid by the Market-people for their accommodations.

That according to this Custom, they made the Ordinance and by-Law,

Mr. Attorney in his Sur-rejoinder hath not denied any part of this; but offers a traverse to that which is no where alledged or supposed. It is never pretended that the City have had time out of mind the very Tolls and Summs of Money for Toll assessed by the Ordinance. There is not a word in the Rejoinder to that purpose, but to the contrary; (viz.) That they in their Rejoynder claim a Power by Ordinance of Common-Council to assesse and set the Rates of these Tolls and Payments as often as and when to them shall seem expedient. It is admit-ted in the Rejoinder, that these Summs were not time out of mind, only they had Power to sett, and assess, and ascertain, as often as expedient. Therefore when Mr. Attorney traverseth our having time out of mind the Tolls, Rates and Summs of Money by the Ordinance assessed, and in certitud' reduct' This is plain, besides any thing claimed or pretended unto, If he had intended to traverse what we have alledged, that we have had time out of mind divers reasonable Tolls & Summs of Money for Stalls and Accommodations: Or if he would have traversed the Instance alledged for the Common Council assessing those Tolls, as often as expedient, that was plain and easie to doe; but that he hath not done: He hath only traversed whether the Tolls, Rates, and Summs of Money, by the Ordinance assessed, and reduced into certainty, have been time out of mind. This is the proper sense of his Traverse, but if doubtfull in its

sense,

ſenſe, his Traverſe is naught for that cauſe; for dubious words can make no Iſſue for the Jury to try, elſe men ſhould be tricked and enſnared by doubtful words to pervert right. So that if the matter alledged in the Record, be ſufficient in Law to juſtifie the making this Ordinance, or By-Law; then what is done therein by the Act of Common-Council is lawfully and rightfully done, and no Forfeiture. I do agree, that for a Lord of a Market to preſcribe to have a Toll uncertain, and as often as expedient, to aſcertain it is no good Preſcription.

But that is not our Caſe; I do diſtinguiſh betwixt that and this Caſe: Where there is by Cuſtom, confirmed by Acts of Parliament, (for I ſhall ſhew that they are Acts of Parliament, notwithſtanding what hath been objected againſt them,) a Power and Authority veſted in the Lord Mayor, Aldermen, and Common-Council, to regulate and order the People, Trades and Markets in the City, and the Places and Conveniencies and Officers from time to time, and conſequently to regulate and aſcertain the Tolls or Rates to be paid by the Market-people, to prevent Extortion and Diſorders.

That ſuch Cuſtom is legal. The Chamberlain of *London*'s Caſe. An Ordinance that no Broadcloth ſhall be ſold in the City before it be brought to *Blackwell-Hall* to be ſearched, and a Penny for every Cloth to be paid for Hallage, under pain for forfeiting 6 s. 8 d. a Cloth, to be recovered in the City Courts. Rep. 5. 69.

Though objected that this was an Impoſition of payment of Money upon the King's Subjects, yet adjudged good, and a Procedendo granted,

An Ordinance that no Unfreeman ſhall uſe a Trade in *London*, adjudged good. City of *London*'s Caſe, Rep. 8. fol. 1.

A multitude of Ordinances they have for regulating all manner of Trades, and of Rates and Prizes. And as much reaſon there is to object againſt them, as this Ordinance, or the Cuſtom in this Caſe: But the City of London have a Government and Power of making Ordinances, for governing and regulating Trades, buying and ſelling within the City, placed in the Common-Council, and confirmed by Act of Parliament; and therefore not like the Caſe of any private Lord of a Market. But 'tis true, their Ordinances muſt not be unreaſonable. The Payments that are impoſed by this Ordinance, are only impoſed upon thoſe that are under ſhelter; 'tis reaſon a recompence ſhould be paid, and there is no unreaſonableneſs or injuſtice appears in the Ordinance, but a reaſonable recompence. But the Cuſtom or Power of the Common-Council is not denied, as I take it: For, they have not denied the Power to regulate and aſcertain the Tolls or Summs of Money alledged to be in the Common-Council, if they had, that muſt have been tryed: Nor have they denied the Rates ſet to be reaſonable. So that I think as to this matter, we have well entitled our ſelves, and

justified our making our By-Law, and taking the Tolls or Rates thereby appointed; and nothing in the Surrejoinder against us to the contrary objected.

But for confirming and making good our Customs, in the Plea there are three Acts of Parliament pleaded.

1. Magna Charta:
2. Stat. 1. E. 3.
3. Stat. 7. R. 2.

The King's Council have not denied Magna Charta to be a Statute, but have denied the other two to be Statutes, or Acts of Parliament; and the reasons given by them are,

Obj. 1. Because not in Print, nor Roll of it to be found; or because no body knows where to find it.

Resp. 1. Private Acts of Parliament do not use to be Printed, few are.

2. No Roll to be found; Suppose there were not, doth this after so long a time conclude there was none such, especially since Mr. Sollicitor was pleased to acknowledge that there are no Parliament Rolls of E. 3. till 4 E. 3.

It is true that almost all the Parliament Rolls of H. 3. E. 1. E. 2. and till 4 E. 3. are almost all lost. But besides in those days publick Acts were not only entred upon the Parliament Rolls, but from thence transcribed, and sent under the Great Seal to be published by the Sheriffs of the Counties, in the Cities and Boroughs, and also by Writ to the Courts in Westminster-Hall to be there entred and recorded, of which there are many found, especially in the Exchequer, and hence came the rule in Law, that Judges ex Officio, are bound to take notice of general Acts of Parliament: But for private Acts they were put under the Great Seal, and the Parties interested had the same to produce. But that these in this Case should be questioned to be Acts, is strange. But to prove them Acts: First,

1. As to the Act 1 E. 3.

1. We have pleaded it under the Great Seal of King E. 3. that made it with a profert hic in Cur' and shewn it with our Plea as we ought; and this is Evidence sufficient of it self. If the same produced under the Great Seal put to it when made, be not sufficient Evidence to satisfie, what can be?

Trin. 1. E. 3. r. 61, 62. 2. But in this Case it is enrolled upon record also, Inter placita Corone penes Camerarios in Scaccario; it is enrolled there.

Obj. But perhaps it may be objected also, That this was no Act of Parliament, but only a Grant or Patent in Parliament; because 'tis that the King de assensu Prelator' Comitu' Baron' ac totius Communitat' regni in præsenti Parliamento.

Resp. That Acts of Parliament observe not any certain Form.

Jones, 103. In the Case of the Earldom of Oxford express, that there was variety in Penning Acts of Parliament in ancient time, Dominus Rex per Consilium fidelium subditor'

ſub litor' ſuor' ſtatuit, and other forms there, are yet good Acts. But that they were anciently in form of Patents or Grants in Parliament, Magna Charta, *C.* 1. is in form of a Charter or Grant. The form of the Act of Parliament 11 E. 3. for creating the Prince, Prince of Wales, begins, Edwardus Dei gratia, &c. in form of Patent, and is De communi aſſenſu & conſilio Prelator' Comitu' Baron' & aliorum de conſilio noſtro in preſenti Parliamento, and adjudged a good Act of Parliament, and the Authorities and Reaſons to prove it an Act of Parliament are fol. 18, 19, 20. ſo full, that it might be thought that this Objection would never have been made. And that this is in the ſame form that all the reſt of the Acts of this very Parliament of the 1 E. 3. are, appears by the Patent Roll of the ſame Parliament. A Charter granted by the King de aſſenſu Prelator' Comitu' Baron' Communit' Regni in Parliamento apud Weſtm' to enable the City to apprehend Felons in Southwark.

Princes Caſe, R. 8. fol. 8.

Membr. the 17.

An Act in the ſame form for the annulling the Conviction of Treaſon that was againſt Roger Mortimer, in the time of E. 2.

Rot. Clauſ. 1 E. 3. M.

An Exemplification then entred of an Act made in the ſame form in the ſame Parliament, for the annulling the Attainder of Thomas Earl of Lancaſter, attainted tempore *E.* 2.

Rot. Pat. 2 E. 3. P. S. 1. M. 17.

Divers other Acts of Parliament in the ſame form made 1 E 3. for annulling divers other Attainders that were tempore E. 2. ſo that as to this Act of Parliament 1 E. 3. I think the Objections are anſwered, and that it is an Act as pleaded.

Rot. Pat. 2 E. 3. P. S. 2. M. 11. Inſt. 2. 527. 639.

And as to the other Act 7 R. 2. that that is no Act of Parliament, only a Prayer of the Commons that there might be a Patent granted to the City, confirming their Liberties, licet uſi vel abuſi fuerint; and the anſwer was, Le Roy le vieult, and object for Reaſons againſt that being an Act of Parliament,

Obj. 1. It wants the aſſent of the Lords.

2. It is only a Prayer of the Commons to have their Liberties confirmed, and the King's anſwer le Roy le vieult, but nothing done to confirm it.

Reſp. 1. As to the firſt Objection.

Suppoſing it true that there is no mention made of the aſſent of the Lords, yet the Act is a good Act.

1. It appears to be in Parliament ad inſtantiam & requiſitionem Communitat' Regni noſtri in preſenti Parliamento.

2. The anſwer in Parliament that is given by the King to the making all Laws is given to this, [le Roy le vieult.]

3. And next, it is admitted to be upon the Parliament Roll, 7 R. 2. Num. 27. I have before said that Acts of Parliament are not in any certain form; sometimes entred as Charters or Grants, sometimes as Articles, sometimes and frequently as Petitions; the Books I have already cited prove it. But according to the Course of Parliaments, let it be in what form it will, let it begin in which House it will, yet it must go through both the Houses of Parliament before it can come to the King for his Royal assent. If either House rejects or refuseth, there it ends, it comes not to the King; nor is the Royal assent in these great operative words [Le Roy le vielut] in Parliament given to any thing but what the whole Parliament have assented and agreed unto. So that this is an Objection grounded upon a Reason contrary to all the course of Parliaments, which shews that the Lords assent was to it though not mentioned.

Selden's Mare Claus. 249. gives a full Resolution herein: Certissimum est, saith he, that according to Custome no Answer is given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it be brought in first by the Lords, or by the Commons, hath passed both Houses, as it is known to all that are versed in the Affairs and Records of Parliament. And in the Prince's Case, before cited, there the Act is said to be de Assensu & Consil' of the Lords, but doth not name the Commons, And this Answers the other Reason also, viz. That it should only be a Prayer and Petition also, to have a Charter of Confirmation granted: For since the Forms are in manner of Petitions, since the Royal Assent or Words, Le Roy le vieult, is never put to any Bills in Parliament, but such as are thereby made and passed into Laws, the giving the Royal Assent is sufficient in this Case to prove it a Law. But for farther Evidence,

1. We have it under the great Seal of King R. 2. thus penn'd. Ad instantiam & requisitionem Communit' Regni nostri Angl' in presenti Parliamento nostro pro majori Quiete & Pace inter Legeos nostros, fecendis, & pro bono publico de assensu Prelatorum Dominor' Procerum & Magnat' nobis in eodem Parliamento assistentium, &c. So that hereby it is fully proved, and shewn, that though the Assent of the Lords be not mentioned in the Copy, yet that it was had, and under the Great Seal of R. 2. it so appears. We have also in our Book of the Acts of that time in the City, the Proclamation made upon the first promulging this Act, in the time of Sir Nicholas Brembre, Lord Mayor, and therein it is also entred in the same words, as before, under the Great Seal of R. 2. de assensu Prelator', &c. Next our Books and continual Practice ever since. 'Tis true, that in the 7 H. 6. fol. 1. when 'tis said, that the Customs of London were confirmed by Statute, Quære what Statute; but it is not there made a Quære whether this were a Statute; Instit. 4. 250. Rep. 5. 63. Rep. 8. 162.

Lib. H. f. 169. a & b

162. all ſay that the Cuſtoms of London are confirmed by Parliament, 7 R. 2. Juſtice Jones 283. hath it verbatim out of the Parliament Roll. The conſtant courſe of pleading the Cuſtoms of London is to plead a confirmation of them by this Act of Parliament: So that as to this point there is not any one Book or Opinion, before this day, in favour of what is affirmed, that theſe are not Acts of Parliament; and our Plea ſtands good in Law, and the Ordinance, and By-Law, and Cuſtom good, and then no Forfeiture thereby.

3. But ſuppoſe and admit, that this By-Law be the Act of the Corporation, be not good and ſufficient in Law, nor in Law juſtifiable, Quid ſequitur? Then it is void in Law. Then if it be void in Law, How can it make a Forfeiture? Suppoſe a Leſſee for years, or for Life, makes a Feoffment, but it is not duly executed for want of Livery and Seiſin, by which it is void in Law, Can this make a Forfeiture of the Eſtate of the Leſſee? Suppoſe a Corporation Tenant pur auter vie makes a Feoffment which is void for want of Livery duly made, Will this forfeit their Eſtate? A void Act ſhall not deſtroy or forfeit a precedent Eſtate. A Parſon that hath a former Benefice accepts a ſecond Benefice incompatible, was inſtituted and inducted, but did not read the the Articles, his firſt Benefice was not forfeit or void hereby becauſe by the Statute the not reading his Articles had made his Inſtitution and Induction void. So that then whether this By-Law or Ordinance were good or void in Law, perhaps is not much material; it cannot make any Forfeiture of the Corporation, it can have no ſuch effect: for if it be a good and lawfull By-Law, no Forfeiture can be for doing a good and lawfull Act. If the Ordinance be not warrantable by Law, then it is void in Law, if void in Law, a void Act can make no Forfeiture. Dy. 377. b.

Obj. But you received and exacted from the Kings Subjects Summs of Money by this Ordinance.

Reſp. Suppoſe we did, and that we had no right to have this money, if an Officer, by colour of his Office, receive more than is due, it is Extortion, and a Crime puniſhable: But if a Perſon that is no Officer take money that is not due, or more than is his due, the Parties injured have their Remedies by Action; but this is no Crime for which any Forfeiture or Penalty is incurred by the perſon that ſo takes or receives the money. Suppoſe a Lord of a Manour exact or take greater Fines or Summs of Money from his Copyholders or Tenants than he ought, they have their Remedies by Actions againſt thoſe that receive; ſo if a Corporation receive or take moneys ſuppoſed to be due, but in truth is not, how can this Forfeit any thing.

Obj.

Obj. But you took upon you a Power and Authority to tax the King's People, and to take and receive the money so taxed.

Resp. This is but the same thing, only put into greater words. It is still but the making of an unlawfull By-Law, and thereby appoint money to be paid which ought not, or more than should be; and the turning of it, or expressing it in stately words, of taking upon you, or usurping Authority to impose upon, and tax the King's People. Whosoever doth any act or thing, he takes upon him, and doth also execute the Power and Authority of doing that act or thing which is comprehended in the thing done. The making a By-Law, or Ordinance, whereby more is ordered to be paid than ought, or money appointed to be paid where none is due, is still all the fact and thing done, and if that make no Forfeiture of the Corporation, or Crime punishable by Indictment or Information, except only as the Statute 19 H. 7. c. 7. which I shall hereafter mention, hath appointed for Forfeiture of 40 s. The taking or usurping the Power to doe it, cannot be more, or effect more, than the doing the thing which comprehends it.

(2.) As to the other Cause alleadged in the Replication for Forfeiture, the Petition printing and publishing it.

In the Replication 'tis alleadged, That a Parliament the 10th of January was prorogued to the 20th of January. That the 13th of January the Mayor, Commonalty, and Citizens of London, in their Common Council assembled, malitiose, advisate & seditiose, took upon them ad judicand' & censand' the King, and the Prorogation of the Parliament by the King so made; and that the Mayor, and Commonalty, and Citizens of London, so in the said Common Council assembled, did give their Votes and Order, That a Petition, in the Name of the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled, should be exhibited to the King. In which Petition it was contained, That by that Prorogation the prosecution of the publick Justice of the Kingdom, and the making necessary provisions for the Preservation of the King, and his Protestant Subjects had received Interruption. And that the Mayor, Commonalty, and Citizens of London, in Common Council as aforesaid assembled, did malitiously, and seditiously, to the intent the same should be dispersed among the King's Subjects, and to cause an Opinion that the King obstructed the publick Justice, and to stir up Hatred and Dislike against the King's Person and Government, did order the said Petition to be printed, and afterwards they did print it, and caused it to be published.

Rejoinder as to the Petition.

The Defendents in their Rejoinder to this Breach set forth and alleadg, That there was a Plot against the Life of the King, the Government,

ment and the Proteſtant Religion, and ſet forth all the Proceedings upon it, the Attainders and Impeachments of the Lords in the Tower in Parliament depending, the Proclamations declaring the Dangers by this Plot, that they could not otherwiſe in humane Reaſon be prevented, but by the Bleſſing of God upon the Conſultations and Endeavours of that great Council the Parliament, and commanding a General Faſt to be kept in London the 22d of December, and that it was kept accordingly. The Proceedings in the Parliament towards the Tryall of the Lords, and preparing Bills to be enacted into Laws, for preſervation of the King and his Subjects againſt theſe Plots and Coſpiracies. That divers of the Citizens, loyal Subjects, being much affrighted, and troubled in their Minds, with the apprehenſion of theſe Dangers, did exhibit their Petition to Sir Patience Ward, then Lord Mayor, and the Aldermen, and Commons in Common Council then aſſembled, containing their Fears, and Apprehenſions, and Expectations, from the King and that Parliament, did petition, that the Common Council would petition for the ſitting of that Parliament, at the time prorogued. And thereupon the Mayor, and Aldermen, (naming them) and Commons in Common Council aſſembled, from their Hearts truly loyal to the King, and for the ſatisfaction of the Citizens, who had exhibited that Petition, and of intent to preſerve the Perſon of the King, and his Government, did give their Votes, and order a Petition ſhould be exhibited to the King in the Name of the Mayor, Aldermen, and Commons in Common Council aſſembled, and ſet forth the Petition in the Name of the Mayor, Aldermen, and Commons in Common Council aſſembled in hæc verba:

Wherein among other things it is contained, That they were extremely ſurpriſed at the late Prorogation, whereby the Proſecution of the publick Juſtice of the Kingdom, and the making proviſions neceſſary for preſerving the King's Perſon, and his Proteſtant Subjects, received Interruption. And did farther agree and order, That that Petition, after it had been preſented ſhould be printed, which was ſo ordered with intent. That falſe Reports concerning the Petition might be prevented: The Enemies of the King and the Conſpirators from proceeding in the Conſpiracy deterred: The Troubles in the minds of the Citizens alleviated, and the Citizens know what had been done upon their Petition. That the Petition was delivered to the King, and afterwards printed. That this is the ſame Petition and Printing in the Replication mentioned abſq; hoc, that any Petition of or concerning the Prorogation of the Parliament was made, ordered, publiſhed or printed in any other manner than they have alleadged, as the Attorney General ſuppoſeth. To this part of the Rejoinder, Mr. Attorney hath demurred generally by the Demurrer, the Fact alleadged in the Replication is admitted to be true. And it is true, that there

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are no words, that are written or spoken, but are subject to various Constructions: But I take it that no words, whether written or spoken, ought to be taken in an ill sense, if they may reasonably be taken in a better, Nemo presumitur esse malus; and therefore the words must stand as they are penn'd: and having first expressed their Fears, and next their Hopes, from the King and Parliaments procedings in Trial of those that were Impeached, and making Laws for their Security, and how they were surprized at the Prorogation, then they say, That by that Prorogation, the prosecution of the publick Justice of this Kingdom, and the making necessary provisions for the preservation of the King and his Protestant Subjects had received Interruption. It is mentioned only as a consequence of the Prorogation, 'tis not said or expressed that the King did interrupt, for I think there is great difference betwixt the one sort of expression and the other. An ill Consequence may attend a good, and commendable, and most necessary Act; but no Consequences can make an ill Act good; and therefore the expressing the Consequence, doth not necessarily condemn or declare the Act to be an ill Act. Suppose that in the time of the great Plague a man had had a Suit in Westminster-Hall, wherein all his Estate had been concerned, and had said or writ, That by the adjournment of the Terms by the King, the Procedings of the Courts of Justice in his Suit had received an Interruption, had these words been punishable? The adjournment was then the most necessary and commendable Act that could be for the preservation of the King's Subjects in that raging Pestilence: and the Act it self being so good and necessary, though there were such Consequence as to that particular Suit, the writing or saying that it had such a Consequence, such an Interruption, did not, I conceive, condemn, judge, declare or express the Act to be ill. Suppose a man had had a Bill depending in that Parliament to be Enacted for the enabling him to sell his Land to pay his Debts, to free him from a Gaol: Or, suppose that some one of the Lords impeached in that Parliament had made a Petition for the Sitting of the Parliament, and had therein expressed as a reason and ground of his Petition, the like words as in this Petition. What would the Court have judged of it, are not the Cases much the same? if they are, there will be no distinction of persons in Judgment; I am sure there ought not. Perhaps when this Petition was made, there might be too much heat in the minds of men, and it is true, that heat encreaseth heat, and fire kindles fire; 'tis time for all sorts to grow cool and temperate, and to weigh and consider we are or should be considering men. This Petition was made Nemine contradicente, and undoubtedly among such a number as the Common Council, there must be men of variety of Tempers and Dispositions: But for the greatest number of the Aldermen and Common Council, think of them, we know the men, many of them; can we imagine that they had either the least ill thought

or

or meaning towards the King, his Perſon, or Government, in this Petition, or the printing it. And as for the printing it, that, my Lord, ſtands upon the ſame Reaſons and Grounds: For if there be nothing ill or unlawfull in it contained, then the printing and publiſhing of that which contains nothing ill or unlawfull, is not, as I conceive, ill or unlawfull. Printing is but a more expeditious way of Writing, and is good or bad as the matter printed is good or bad. The Defendants in their Rejoinder have ſet forth their whole caſe, the Reaſons and Grounds of what the Common Council did, and the manner and intent of their doing it; all which Fact cannot be denied to be true, but is now confeſſed by the Demurrer. It hath not, nor can be ſaid, but it is well pleaded, and might have been traverſed and denied if not true: But it is confeſſed by the Demurrer to be true, and therefore that muſt be taken to be the Fact, and not as alleadged in the Replication, and then ſo taken, I ſubmit it to your Judgment.

(3.) But the next thing conſiderable is, Whether, ſuppoſing and admitting, that if done by the Body Politick, it had been a Miſcarriage, or a Crime, whether, not being done by the Body Politick, nor under the Common Seal, but by Common Council, whether thereby the Being of the Corporation ſhall be forfeit?

A Common Council in Corporations is generally a ſelect number of the Body corporate, conſtituted to adviſe and aſſiſt the Corporation in their ordinary affairs and buſineſs. There is no certain Rule nor Meaſure of their Power, wherein all the Common Councils agree. In ſome Corporations the Common Council have greater authority, in ſome leſs, according to the ſeveral authorities by the reſpective Charters where the Corporations are by Charters; or by Cuſtome, or Uſage, where the Corporations are by Preſcriptions: But in all they are a ſubſervient number of Men, conſtituted and authoriſed for particular ends and purpoſes. And in this caſe I think the Court can take notice of the Common Council no otherwiſe than upon the Record they appear to be. The Replication doth not ſay what they are, but would go in the dark, by intention and preſumption, the beſt way and method to arbitrary Determination. The Rejoinder ſaith, that the Citizens and Freemen are a great number, fifty thouſand, and more. That there hath been time out of mind a Common Council, conſiſting of the Mayor, and Aldermen, for the time being, and of certain Freemen, not exceeding 250, annually elected to ſerve as Common Council-Men, and are called the Commons of the City. That time out of mind there hath been a Cuſtome, that the Mayor, Aldermen, and ſuch Citizens, ſo elected to be of the Common Council, according to cuſtom, have been accuſtomed to make By-Laws and Ordinances, for the better regulation of the publick Markets, for appointing

times and places, and assessing and reducing into certainty reasonable Tolls, Rates, and Summs of Money, payable for Stalls and Standings, in the Market. For any thing appears upon the Record, this is all they have power to doe: Non constat to the Court that they have any other power or authority over Lands, Estates, or any thing else. Next, If this which in the Rejoinder is alleadged, of the Being and Power, be true, and so admitted, then what they did in making the Ordinance, was done by good and lawfull power and authority, and then can be no Offence: But if to make the Ordinance be an Offence, and an unlawfull Act, you deny the Custom to be good, and say, the Custome is void, and against Law, and for that Reason the Ordinance illegal. Then non constat that they had any power at all to doe any thing, and then a Common Council to advise without power to doe any Act: and if so, How can a parcel or part of a Corporation, not authorised to doe any Act, doe an Act that shall forfeit? Suppose a particular Company, as the Mercers, had done this, could this be a Forfeiture? But if to avoid this you will say, that the Court shall take notice of the Common Council of London, to have the management of the business of the Corporation belonging to them. This I think the Court cannot doe, and I cannot see how possibly they can, as a Court, judicially take notice hereof. Suppose our Question had been concerning another Corporation, could the Court then, as a Court, judicially have taken notice of the Power or Authority of their Common Council. Mr. Solicitor in his Argument held, That there was no difference betwixt London and another Corporation, except that London was the biggest. Then put the case of any other Corporation, could the Court judicially have taken notice of their Power or Interest, without having it specially set forth? Is it possible the Court can, since they differ one from the other, as much as their Charters or Constitutions do differ, of which there is hardly to be found two in England that do agree in their Powers? If it had been of another Corporation, of necessity the constitution of the Common Council must have been set forth. If you are upon a By-law, made by any other than the Body Politick it self, must not the Power and Authority of those that made it, be shewn, and set forth in Pleading, in any case where there is occasion to use it? How otherwise could the Court judge or determine of it? So that taking the Law to be as the other side saith, that London differs not from any other Corporation; it is no where alledged in the Pleading, that they have Power to make By-Laws, for the ordering and governing the City, or that they can bind all the Corporation in sale or disposition of their Lands, or have the power of the common Seal: Therefore when the King's Counsel argue from these Powers, their Power of forfeiting, they argue quite out of the Record; they have no where alleadged or pleaded what they are, or what Power they have, as they should have done, if they had

had ſo intended. So as to this particular here is nothing before the Court, nothing upon Record, to ſhew how or which way the Body Politick ſhould be concerned in theſe Acts of about two hundred and fifty of their Members, called the Common Council. Whereſoever any By-Laws or Ordinances are pleaded, the Power to make theſe By-Laws or Ordinances is pleaded, and ſo are all particular and derived Authorities, whenever occaſion to plead them, and neceſſary they ſhould be ſo: For 'tis Fact that the other ſide may and ought to be at liberty to deny it, if he ſee cauſe; and therefore if they will have it that the Common Council have abuſed ſome Power or Authority they have, thereby to forfeit the Corporations, they ought to have ſhewn it; to ſay that notice ſhall be taken, or it ſhall be intended or preſumed, is in truth a Preſumption upon the Court, as if the Court ſhould take notice of intend or preſume what the King's Counſel would have, which the Court cannot, nor will doe, more in this than in other caſes. But ſuppoſing the Court will take more notice of London than any other Corporation, and will take notice of the Common Council there, and of their Power and Authority; and I will ſuppoſe as the other ſide do, That they have the Power of making By-Laws, of leaſing, granting, and managing the City Lands and Revenues, and of ſealing with the common Seal, and that this they have by Cuſtome; Then ſurely, ſay the other ſide, they have the Power of ſurrendring and forfeiting the Corporation. If I ſhould anſwer, ſurely and without doubt they have not, this would not argue they have not; but the Argument ſhould come of the other ſide, to prove they have; they have not, nor can produce any Caſe or Opinion to prove it; and the very thought that they could is ſo new, that I believe none can be found like it. But let us conſider the nature of this Thing a little particularly, though general Diſcourſes are moſt eaſie and floyd, yet perhaps a particular Enquiry may beſt diſcover. Admit that they have the Power the other ſide ſay they have; yet they are not the Corporation, but a part conſtituted for theſe particular ends and purpoſes for which they are impowered. Corporations had their Creations by Charter; that gives them their Being, and the Form, Method, and Power of Action. Suppoſe that the firſt Charter of Incorporation that was granted to London did grant, that the Citizens ſhould be incorporate, and a Body Politick, by the Name of Mayor, and Commonalty, and Citizens, that there ſhould be a Mayor, ſo many Aldermen, and ſo many of the Citizens, annually elected, that ſhould be a Common Council, and that they ſhould have Power to make By-Laws, to demiſe or grant their Lands, under the common Seal, in the name of the Corporation. If they doe any Act not within their Commiſſion, is not that void? Suppoſe a Grant made to the Common Council, would not that be void? Suppoſe a Grant made by the Common Council in the name of the Common Council under Seal, or in the name of the Cor-

poration, but not under Common Seal; is not all this void? This I only instance, to shew that their Charter and Authority is their Power and Warrant, they are to act by; did ever any man hear of, or see a Charter giving the Common Council power to Surrender the Corporation? or was it ever thought of before these days? If then no such power by the Charter given, if they cannot doe it without power given them, shew me their power, or else I think I may conclude sure they cannot Surrender the Corporation without power. But the Common Council in London that is by Custom, and their power is by Custom. Then if the Question be, what is their power? it is answered, what they have used and accustomed to doe, that they may doe; what they have not used or accustomed to doe, that they cannot doe: for if Custom and Usage be the authority, that authority can go no farther than their Custom and Usage goes. Then put the Question, have the Common Council used to Surrender or Forfeit the Charter, no body can say it; what reason then is there for any man to say they can doe it? It is probable that the Common Council in London, had first their Institution from some By-Law or Ordinance, though now not to be produced, but consumed by time. But be it that, or any other imagined Commencement, can it be imagined that those that gave them their Original authority, gave them power to surrender the Corporation, or forfeit it. Suppose that the power given them did authorize them not only to make By-Laws and Ordinances for the good order and government of the Corporation, to grant or demise their Lands and Revenues, but had some general words in it to act and manage the matters of the Corporation. Is it not against all sense to suppose that that which is deputed and constituted for the well-ordering and managing of the Corporation should have power to surrender it. Then as the Counsel of the other side argue, that because they may surrender they may forfeit: By the same reason, I hope I may argue, if they cannot surrender or dispose of the Corporation, they cannot forfeit. Next, Those Acts of the Common Council are not done neither in the name, nor as the Acts of the Corporation, nor under any Seal; but do import in themselves only to be the Acts of the Common Council. The Ordinance, That is made by the Mayor, Aldermen, and Commons in Common Council assembled. The Petition is the Petition of the Lord Mayor, Aldermen and Commons in Council assembled. Their Leases or Grants are in the names of the Corporations, and under the Common Seal and the Common Council only Ministerial to the Corporation in ordering, managing and disposing all for the benefit and advantage of the Corporation, to avoid the Inconveniency of assembling the numerous Body. But that any thing that hath but a ministerial power for the service and benefit of their principal, should have power to dispose of, sell, convey or surrender, and destroy their principal, is no consequence in Law or Reason. No Deputy-

assistant,

aſſiſtant or Bayliff hath ſuch power, if he exceed his authority, his Act is void. Is it not ſo with all Authorities and derived Powers? what they doe beyond their authority cannot bind thoſe from whom they derive it. It cannot be the Act of the Corporation, for a Corporation cannot make a Petition, no more than they can make a Deed, or ſubſcribe a Writing, except under the common Seal.

Corporations cannot make a Leaſe at will, licence a Man to enter upon their Lands, or doe any like Act, but under their common Seal. Nor can they commit a Treſpaſs or Diſſeiſin but by Command precedent, or Aſſent ſubſequent under their common Seal. How then can this be their Act? There is nothing in it that imports it ſhould be theirs, nor ever intended to be theirs; it is not done by them, nor in their names, but by the Common Council, and in the name of the Common Council. If we may take notice of what is out of the Record, we know that they have in London a greater Aſſembly than the Common Council, viz. The Common Hall, wherein the Common Council are no more than others. Can the Petition of the Mayor, or Mayor and Aldermen, in their names, be taken to be the Act of the Corporation? if that cannot be, why ſhould the Petition of the Common Council in their own names be any other than their own Petition, as their Ordinance and By-Laws theirs, and not the Corporations. 12 H. 7. 25, 26. 9 E. 4. 39.

The Caſe of Corporations takes notice of their Power, as Common Councils, to exclude the Commonalty and the reſt of the Corporation. The Act allows the Common Councils ordering Petitions. But where is it to be found that it was ever ſaid or thought on before, that they could forfeit or diſſolve the Corporation? Rep. 4. 77. 13 C. 2. cap. 5.

(4.) But ſuppoſing all that I have ſaid againſt me: And ſuppoſing the Acts of the Common Council to be the Acts of the Corporation: And ſuppoſing thoſe Acts, viz. The making the Ordinance and Petition not juſtifiable or excuſable; Then the great Point will be, whether they or either of them are ſuch Miſcarriages or Offences in Law for which the Charter, that is the very being of the Corporation, ſhall be forfeit.

This I call the great Point, for I think it to be as great in Conſequence as ever any at this Barr, as if Magna Charta were at ſtake; for in my apprehenſion, not only London, but all the Corporations of England, and the Government of England will be deeply concerned in the Queſtion. For let us but conſider what a vaſt part of England is concerned in the Corporations of England.

1. Eccleſiaſtical or mixt, as Archbiſhops, Biſhops, Dean and Chapters, Parſons, Vicars, Univerſities, Colleges, Hoſpitals of all ſorts.

2. All

2. All the Cities and considerable Towns and Boroughs in England.

3. The very Frame of our Government is concerned; for one of the Estates of the Kingdom, viz. The Commons in Parliament, consists of Knights, Citizens and Burgesses; the Citizens and Burgesses are usually chosen by them that are Free of the respective Cities and Corporations, and where not chosen by them, yet the Elections are generally under their Power and Influence, and the Return made by them.

Perhaps also a Peerage is a sort of Corporation. Perhaps the World it self, at least this little World, will no longer be able to subsist in health than the due Order and just Temperament of the several Parts and Powers therein, are preserved, and contain themselves within their own Bounds. The taking away or Infeebling any principal Part brings a Lameness and Deformity, Pain and Disorder upon, and at length confounds the whole. The Laws answer their ends, whereof the principal is the preservation of the Government which preserves the Laws, they cannot subsist one without the other; therefore whatsoever it is that tends to the Subversion, or leaving at Will and Pleasure that which is so considerable in our Government as Corporations are, ought to be throughly considered.

The better to examine and consider this great Point: In the first place, the Reasons given on the other side are,

Object. 1. That if Corporations be not forfeitable for their Miscarriages, they will attempt and doe extravagant Acts, raise Sedition or Rebellion, and there will be no adequate Punishment to their Miscarriages.

Resp. In answer to this Reason,

1. There is no illegal Act that they can attempt or commit, but that they are under the same Severities and Corrections of Law as any other the King's Subjects not Incorporate are. Though it be true, that the Corporation it self is only a Body Politick, an invisible Body, yet the Members of it they are visible. If they as Members of that Corporation commit or doe any unlawful Act, they are punishable for it in their own private Capacities. If they make any Ordinance or By-Law to raise Money unlawfully upon any of their Members, or others, the By-Law or Ordinance is void. If they receive or collect any Money by it, the Receivers and Collectors are to answer it, they are to be sued as any other Subject. Suppose a Lord of a Mannor or Market make an unlawful Order to collect or take Money from his Tenants or Coppyholders, or unreasonable Tolls in his Markets. This Order is void in Law, and those that collect or receive any Money by it, are answerable for it, and the Parties grieved have their proper Actions and Remedies, and perhaps the Markets, or at least the Tolls may be

be ſeiſed, or forfeit for this Miſcarriage. This is the Proviſion that by Law is made againſt ſuch Exactions, and this is juſt and adequate & reaſonable. And if a Corporation make ſuch Ordinance, By-Law, or Order, and thereby there is the ſame receipt or Exaction, the Subject hath the ſame remedy, and there is the ſame Forfeiture of Toll or Market, as in caſe of any natural Perſon, or Lord of a Mannor, and the Proviſions by Law made are juſt and reaſonable, and adequate in this Caſe of the Corporation, as of the other. The like for any Offence that can be committed, it muſt be done by particular Members, and they muſt anſwer for it. And this is no new Opinion, 21 E. 4. 14. expreſs that a Mayor and Commonalty, or other Body Politick, cannot commit Treaſon, although all the Commonalty doe commit Treaſon, every of them is a Traitor in his own perſon: I might cite other Authorities to this purpoſe, but they have bin already cited by Mr. Recorder in his Argument; and though the Counſel for the King would make theſe Books to be but ſome ſlight Opinions, yet unleſs they could ſhew ſome Authority, Book, or Caſe to the contrary, their deſpiſing or little valuing what they can find no Anſwer for, will not render the Authority and conſtant Opinions of our Books of leſs eſteem than they ought to be. 'Tis no excuſe if they doe an unlawful Act, that they are Members of a Corporation, or did it as a Corporation. No body can ſay this will excuſe them; ſo, that notwithſtanding their being a Corporation, they are ſubject to the Law, be the Offence Treaſon, Sedition, or any other Crime or Offence as, any other the King's Subjects are; every particular Member that acted or committed that Offence, is anſwerable to the Law for it. The particular Members that commit the unlawful Act, and all that act under their Authority, are ſubject to the ſame Law as all other the King's Subjects. And therefore this reaſon, that elſe there will be no Puniſhment upon them adequate to the Offence, and conſequently a Miſchief and Inconvenience is but a ſhadow, and nothing proportionable to the Miſchiefs and Inconveniences attending the poſition of a Forfeiture of the other ſide. But conſider the Injuſtice that would be of the other ſide, if this ſhould be ſo; we know Aſſemblies determine their Act by the major Vote, and great ſtruggling there is, as we too frequently ſee in their Debates and Reſolutions, and carried by majority of one or two Votes, ſometimes by ſurprizes and undue management, ſometimes by fear and terror: Suppoſe an evil Act ſo carried or managed, is it reaſon that all the whole Corporation ſhould be hereby forfeit? and thereby all other men to whom they owe any Debts, muſt loſe them, and the many Intereſts and Livelyhoods depending upon the Corporation, the Cuſtoms, Courts, Offices, and Privileges belonging to it, endleſs to enumerate, ſhall all be undone and deſtroyed.

Obj.

Obj. 2. The next Reason that hath been given is, That it is a general Rule in Law, that the abusing or misusing of a Franchise, is a Forfeiture of the Franchise.

Resp. 2. This is true in the sense that the Books do say it; for if a man misuse or abuse a particular Franchise, he shall forfeit that particular Franchise; but he shall not forfeit any other except it be depending upon and incident to it. And the Cases cited prove nothing farther.

22 Ass. p. 34. Br. Fran. 34. 8 H. 4. 18. Rep. 9. 96. b 24 E. 4. b Inst. 2. 43.

That when a man hath divers Franchises not depending one upon another, and misuseth one Franchise, he shall not thereby forfeit the rest, but only that which he misuseth. And therefore the Cases cited; Where the Abbat of Crowland and the Abbat of St. Albans had Franchises of Customs of Gaols; one would not be at the cost of a Commission of Gaol-Delivery, the other did detain in Prison after legal Discharge, and Fees paid. This was a misuser of those Franchises and Forfeitures. So also perhaps if there be a Franchise that hath Incidents to it; as, Pypowders to a Fair, Pillory to a Leet. An abuser of the Incident, as the Court of Pypowders, or the not having a Pillory, may forfeit the Market or the Leet. If the Lord of a Market take outrageous Toll, he shall forfeit the Market. But doth this prove, that if a Corporation have Fairs, Markets, Gaols, or Leets, and misuseth any of them, that the Body Politick, the Corporation shall be forfeit. If this be so, the Abbats, they being Corporations, in the cases of the Abbat of St. Albans, and Crowland, should have forfeited not only the Liberties of having Gaols, but the very Corporations, or Bodies Politick, of being Abbats; a conceit never yet imagined. Can you say the City of London is either dependent or incident to the Markets; or the contrary, that the Markets are incident or dependent upon the Corporation, that they cannot be one without the other? Can this be said? If this cannot be said with reason, how can then the taking these Tolls admit they were outrageous, and a Forfeiture of the Market forfeit the Corporation? The making the Ordinance, supposing they made it, is but the mean by which they took it. Your Books only prove the abuse of a Franchise, a Forfeiture of that Franchise, or Incidents to it, and no other: But the Inference in this Case is not the Forfeiture of that particular Franchise; but of the being of the Corporation that owned the Franchise: which is a plain Non sequitur, unless you say the Corporation is incident to the Market. Arguments from general Rules are the most fallible, especially in Law; and that this is such, I hope most plainly to shew in the distinguishing the different nature of Franchises; which I shall doe presently, only taking in my way

Stat. West. 1. cap. 31. Inst. 2. 219.

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their next Reaſon that they offer, and anſwer both together: which is,

Obj. 3. That a Corporation is a Franchiſe; that it commenceth by Grant, and therefore Forfeitable and Surrenderable as other Franchiſes are; and if they be Surrenderable, then alſo are they Forfeitable.

Reſp. I do agree, that Franchiſe is a large word, it is of the like ſenſe of Liberty or Privilege. Therefore in Quo Warranto Franchiſes, Liberties, and Priviledges ſeem to be of the ſame ſenſe. To be a Subject born, and to have Liberty and Privilege of a Freeman, and no Villain, is a great Franchiſe; and therefore in Law, when a Villain is made Free, we ſay he is Infranchiſed, he hath the Franchiſe, Liberty and Priviledge of being a Freeman. An Alien he is made Denizen by Letters Patents, a Perſon attainted is Pardoned by Letters Patents, and a reſtitution in blood granted and made a new Creature. By theſe Grants the Alien and the Perſon reſtored have ſuch Franchiſes Liberties and Privileges granted them: that though before they were not capable to take hold, or enjoy, or Act as natural born Subjects or Freemen, yet hereby they have ſuch Capacity granted: Next, I think it will be granted that this Franchiſe, Liberty, Privilege, or Capacity, is not ſurrenderable or forfeitable, except only in Caſes of Treaſon or Felony, where they forfeit their Lives; by theſe inſtances this is proved, That it is no true poſition that whatſoever is grantable is ſurrenderable, and if ſurrenderable forfeitable; which is one of the Reaſons given by the King's Counſel, why a Corporation is forfeitable, for theſe Franchiſes or Privileges are by Grant, and yet not ſurrenderable or forfeitable; and this alſo ſhews that Arguments general and from general Rules are moſt fallible, and fit only to take weak apprehenſions. But next conſider, what it is to be a Body Politick or Corporation. A Body Politick is framed and conſtituted in ſimilitude or likeneſs of a natural body, with Capacity to take hold and enjoy, and act as a natural body, and can no more ſurrender or forfeit his being while the members of that Body are ſubſiſting, than a natural body can while alive. It is only a Capacity framed and created in a multitude to be, and act as one perſon, they are incorporate and made one Body Politick that have Power, and Capacity or Franchiſe of acting taking holding and granting; this is their Franchiſe, admit it ſo, but differs from others. Franchiſes and Liberties of all other Natures are Eſtates and Inheritances grantable and conveyable from one to another as other Eſtates are, this is no ſuch thing grantable or transferrable; other Franchiſes and Liberties affect the King's Subjects, and are Privileges claimed, wherein the King and the reſt of his Subjects not claiming the Franchiſe, are more concerned than in this of being a Body Politick; for other Franchi-

les either convey some Profit from the King, as Felons, Goods, Waifs, Estrays, Wrecks, or the like: Or affect his Subjects, as Courts, Gaols, Returns of Writs, Fairs, Markets, and the like. But this of being a Body Politick, is only a Capacity to be a Person capable of having and holding what may be granted unto it; and of granting and acting as a natural Body, and affects the King, or other his Subjects, no otherwise than giving Capacity to take, hold and enjoy what they can get as other Persons capacitated may. Other Franchises, Liberties and Privileges are distinct and separate Estates, and if any one be forfeit, as it may for misuser, the rest are not; except incidents and appurtenances. But if the being of a Corporation be forfeited, All their Estates, Lands, Goods and Chattels are gone at once: So that though you admit and call this a Liberty or Franchise, 'tis nothing like in its nature to those things generally known and understood by the name of Franchises or Liberties; and general Sayings are generally to be understood of such things as are generally so taken and called. If then there be such great and apparent difference betwixt this of the being a Body Politick, supposing it being in a general and large sense, a Franchise, Liberty or Privilege, and other particular Franchises, admitting that which is said, that the Misuser of a Franchise is a Forfeiture, holds generally true, yet it is not in every particular true, where there is such apparent difference and reason to distinguish as betwixt the being of a Corporation or a Body Politick, which is only a Capacity, and other particular Franchises, which are Estates; there is also apparent reason to distinguish betwixt one and the other, they being so much differing one from the other in nature and reality. But next, That this was never taken in Law to be such a Franchise, Liberty, or Privilege as was comprehended under the general meaning of Franchise or Liberty.

6 E. 1. Inst. 2. 278. By Sta. of Glost' Writs were to go to all Sheriffs forty days before the Eire of general Summons, for all to come in at the Eire to claim their Privileges; and the second day of the sitting of the Justices in Eire a Proclamation made to the same purpose. In the Inst. 2. 281, 282. Comment upon that Statute it appears, that if the party did not appear, his Franchises were seised into the King's hands, Nomine districtionis, and if not replevied sitting the Eire, they were forfeit or lost for ever. If the party did appear, and did not claim, then they were lost for ever. In all the Proceedings in Eire, there is no such thing can be found: That the Corporations did come in and make Claims to their being Corporations or Bodies Politick, or that ever any were seised if it be seisable into the King's hands, or was forfeit for not Claiming. Fulher and Heyward's C. Palm. 491. It appears, that the Dean and Chapter there Surrendred their Charter, and all their Manor Lands, Possessions, Privileges, Franchises and Hereditaments, Spiritual and Temporal, and this with intent

to

to Surrender, that there might be a new Corporation erected; as is recited in the Letters Patents of new Erection. In this Caſe, Rep. 3. 75. And. 2. 120. Jones 168. reſolved, that by this Surrender the old Corporation was not ſurrendered. This Judgment doth conclude, and muſt be given, either becauſe by the word Franchiſe, and the other general words, the Franchiſe of being a Corporation was not comprehended; or if the word's ſufficient, and did compriſe it, that it could not by Law be Surrendered. This I think ſufficiently ſhews that Corporations were in Law as Perſons natural are, and in like manner claimed, and that the being a Body Politick or Corporation, was not to be claimed, compriſed, or meant within the general words, Franchiſes, no more than the Liberty or Franchiſe of Denizen, or Manumiſſion. Next, No inſtance can be given of any ſeiſure of any Corporation or Body Politick for any Forfeiture, Seiſure of their Liberties, or putting Officers upon them, is quite another thing, as I ſhall ſhew preſently: So that theſe general Sayings in Law-Books, that Miſuſer of a Franchiſe forfeits the Franchiſe; neither in Law or Reaſon extends to the being of a Body Politick or Corporation, but is applicable only to particular Franchiſes of other natures; and the other reaſon, that that which is grantable is forfeitable, is as fallacious as before appears.

3. For the Records cited to prove that the Corporation or Body Politick may be Forfeited, I will ſtate thoſe that are moſt Effective, and doe them right therein.

Johannes Dennis, Mayor of Sandwich, and three more, were attached to anſwer Domino Regi de placito tranſgr' & unde Robertus de Stokho, Sheriff of Kent, qui ſequitur pro ipſo Rege, complains that he had ſent his Bailiffs (naming them) to make Execution of the King's Writ, in Villa de Stanore, qui eſt Barona domini Regis, and that the Defendants, with Swords drawn, took away the King's Writ, and trod it under their feet, and would not ſuffer it to be executed, unde dicit quod deterioratus eſt, & damnum habet ad valentiam 2000 Marks. The Mayor appears, and pleads to the Juriſdiction, that he ought not to anſwer this matter, except in the Court of Shipway. The Sheriff replies, That Stanore is the King's Barony, belonging to the Barony of St. Auſtins, and relyes upon a Record before Juſtices in Eire, where an Amerciament upon that Will' was formerly ſet. The Mayor refuſeth to plead over. Then a day is given over: Then 'tis entred thus, P. 9. E. 1.

Poſteaq; coram Domino Rege & ejus Conſil' Quia Barones del' Cinq; Ports nec aliqui alii in Regno noſtro poſſint clamare talem libertatem, quod non reſponderent Domino Regi de contemptu ſibi fact' ubi Dominus Rex eas adjornare voluerit; Et quia predict' Barones non protulerunt aliquas Chartas a

Regibus conceſſis, in quibus non fuit excepta Regia Dignitas, conſideratum eſt quod reſpondeant; & quia le Defendants would not anſwer any other where than in Shipway, conſideratum eſt quod habeantur in defenſionem pro convictis de predict' Tranſgr' & Contempt'. Et quia the ſaid John Dennis is convicted of the ſaid Offence, and the fact of the Mayor, in thoſe things which touch the Commonalty, is the fact of the Commonalty, conſideratum eſt quod Communitas de Sandwich amittat Libertatem ſuam, &c. Then follows, Poſtea, in preſentia of the Biſhop of Bath and Wells, then Chancellour, and others, cum Aſſenſu Regis, an Agreement betwixt the Abbat of St. Auſtins, the men of Stannore and Sandwich, de omnibus contentionibus.

And then goes a long Agreement betwixt the Abbat and the Men of Sandwich and Stannore; concerning their Juriſdictions and Courts:

Et ſi aliqua pars contra concordantiam illam ire vel facere, alia pars habeat ſuam recuperare per breve Domini Regis de Judicio exeunte de iſto Recordo. Et pro hac predict' homines vadiant predict' Abbati 100 Marks, which the Abbat remits for 10 doliis Vini, pretii 30 Marks, to be paid at the Feaſt of St. John the Baptiſt.

This is the Record at large; and for the Extract in the Collections at Lincoln's Inn, whether it be of this Record, or any Execution that went out upon it, non conſtat; But that I think it could not be upon this Record; for the Record is not 30 Marks annuatim, as the Abſtract is, and the Entry of the videtur at the concluſion, quod Judicium extendit contra Barones, Quinque Portuum, & eorum Libertates, ut mihi videtur, that is not my Lord Hales his Note, nor doth it appear whoſe it was. Out of this Record how can a man infer that a Corporation ſhall be forfeit for the Miſcarriage of the Mayor, or Officer, how doth it appear from hence, that they ſhould loſe or forfeit their being a Corporation. By amittat Libertatem all that is meant thereby is their Liberty in Stannore, or the Liberty they claimed to be impleaded in the Court of Shipway, and the Note in the Extract, videtur quod Judicium extendit verſus Barones, muſt be, I think, taken to be as to their Liberty in Stannore, or to be ſued only in the Court of Shipway. I have taken the more notice of this Record, becauſe it hath countenance of a judicial Proceeding; but as to all the other Records cited,

6 E. 2. r. Clau. Membr. 5. A Writ to the Sheriff of Glouceſter, reciting, That the King, for injuries and contempts done by the Mayor and Commonalty of Briſtol, the Liberty of that Vill' by Bartholomew de Baddleſmere, Cuſtos of that Vill' into his hands had ſeized. The Writ commands the Sheriff,

Sheriff, that the Cuſtos ſhould have the Execution of Writs, as the Mayor and Bailiffs uſed to have. And the times of Henry the Third, Edward the Firſt, Edward the Second, and Richard the Second, there were frequent Seiſures of the Office of Mayor, and the Kings did put in a Cuſtos in the place of Mayor, or made a Mayor, and theſe are called Seizures of Liberties.

King Henry the Third put in a Cuſtos over London, which continued till the 54th of his Reign, and then taken off, and the City reſtored to its Election. 49 H. 3.

Edward the Firſt put in a Cuſtos, and continued ſo to doe till the 25th Year of his Reign, and then taken off. 15 E. 1.

The 14th of Edward the Second a Seiſure of the Office of Mayor by Henry de Staunton, and his Fellows, Juſtices in Eire in the Tower, and Mayors put in by the King till the 20th of Edward the Second, and then reſtored: But for that of Richard the Second, give me leave to digreſs, and give you the ſtate of it out of the City Regiſters, which are more full than theſe cited.

A Writ from the King to the Mayor, Sheriffs, and Aldermen, commanding them to come with twenty four principal Citizens, before the King and his Council at Nottingham, in craſtino Sancti Johannis Baptiſt' tunc prox' fut', and to bring ſufficient authority from the Commonalty to anſwer ſuch things as ſhould be objected. They appeared, and had a Letter of Attorney, ubi pro diverſis defectionibus in Commiſſione ſuo ſub communi Sigillo, & aliis de cauſis, the Mayor and Sheriffs were diſcharged of their Offices, and committed diverſis Priſonis; and afterwards, the firſt of July, Sir Edward Dallingrigg, made Cuſtos by the King, came to the Guildhall, and his Commiſſion being read, he was ſworn before the Aldermen, ſecundum quod Majores ante jurare ſolebant; the King alſo made the Sheriffs, and they were alſo ſworn. This is alſo entred in the City Regiſter, Lib. H. fol. 270. b 16 R. 2. July 22. Lib. H. fol. 269. b City Reg.

It appears that the King firſt ſwore the Cuſtos, and the Sheriffs, to be true to him, and alſo turned out the Aldermen. And that the Proceedings were before the Duke of Glouceſter, and other Lords, by a Commiſſion, to enquire of all Defaults in the Mayor and Sheriffs, in the well governing of the City, awarded upon the Statute made by the King's Grandfather, and that they were convicted by their own Confeſſion, and thereupon the Liberty of the City ſeiled. 16 R. 2. r. Cl. M. 30. Ind.

The Pardon and Reſtitution entred, and thereby 'tis recited, that the Proceedings were upon the Statute, and the Judgment was, That for the firſt Offence they ſhould forfeit one thouſand Marks; for the ſecond 19 Sept. 16. R. 2. Lib. H. fol. 272. a ubi ſupra.

ſecond two thouſand Marks; and for the third Offence, that the Liberty ſhould be ſeized.

The Statute 28 E. 3. cap. 10. enacted, That the Mayor, Sheriffs, and Aldermen of London, which have the Governance of the ſame, ſhall cauſe the Errours, Defaults, and Miſpriſions in and about the ſame, to be corrected and redreſſed from time to time, upon pain, that is to ſay to forfeit to the King for the firſt Default one thouſand Marks, the ſecond Default two thouſand Marks, and for the third Default the Franchiſes and Liberties of the City ſhall be ſeiſed into the King's hands. And that the Tryall of theſe Defaults ſhall be by Enqueſts of foreign Countries, and the Pains levied upon the Mayor, Sheriffs, and Aldermen. Upon this Statute were the Proceedings of R. 2. grounded. The other ſide have likewiſe much relied upon another Seiſure made of the Liberties of the City of Cambridge.

5 R. 2. Rot. Par. N. 45. Inſt. 4. 228.

A great Riot committed by the Town, upon the Univerſity, heard in Parliament by way of Petition, and form of Articles exhibited by the Scholars againſt the Mayor and Bailiffs. Upon reading of which it was demanded of them what they could ſay why their Liberties ſhould not be ſeiſed: After many Shifts they ſubmitted themſelves to the King's Mercy. The King thereupon, by common conſent in Parliament, ſeiſed the ſame Liberties into his hands, as aforeſaid, and then granted divers Liberties to the Univerſities, and certain Liberties the King granted to the ſaid Mayor and Bailiffs, and encreaſed their former. Theſe are the moſt ſubſtantial; it would be too tedious to repeat all, for there have been in thoſe days, but not ſince, many like Seiſures of Liberties, as theſe; only general, but nothing particular to our purpoſe, and though not cited, I ſhall alſo mention thoſe in Crook.

Cr. 1. 252. Tyndals Caſe.

Certiorari to the Mayor of Fith; they diſobeyed the Writ, and gave ſcurvey Words; and thereupon Mr. Noy cited two caſes of Seiſures of Liberties. The Biſhop of Durham had contemned the King's Proceſs, and impriſoned the Meſſenger. An Information exhibited againſt him, the Offence proved; adjudged he

33 E. 1. rot. 101.

ſhould pay a Fine, & quod capiatur, and ſhould loſe his Liberties for his time; becauſe juſtum eſt quod in eo quod peccat in eo puniatur. Another

21 E. 3. rot. 46.

in Banco Com' a Prohibition awarded to the Biſhop of Norwich, and he excommunicated the Party that brought the Writ; the Party brought his Action, adjudged againſt the Biſhop, that his Temporalties ſhould be ſeiſed till he abſolved the Party, and ſatisfied the King for his Contempt, and that the Party ſhould recover 10000 l. Damages. I anſwer to them,

1. They

1. They were all above three hundred years ago, except that of 16 R. 2. which is above two hundred and ninety, and no ſuch thing ever done ſince, what ſtreſs or weight can be given to ſuch Proceedings? To what Rules of Law, ſince known or practiſed, can we bring theſe Proceedings? Are they now legal Precedents for the like things to be done? The Writs out of old Records for the Ship-money, and the Knighthood-money, had as good Records to warrant them, and much more plain to the purpoſe than theſe. The Precedents of Edward the Second, and Richard the Second, either of their Lives, or of their Deaths, or of the Lives or Deaths of ſome of the Judges of thoſe days, ought, as I conceive, to be no Examples. And for H. 3. E. 1. E. 2. and R. 2. and thoſe times, they were times of great troubles and diſorders, and what was then done is no Rule or Precedent for this Court, or any other Court of Juſtice, to go by, unleſs by later times allowed or approved. No Law-book or Report of any judicial Proceedings, either of E. 2. or of E. 3. or any later Book of Law that I have yet heard of, or met with, (and I doubt not but if there had been any, the King's Counſel would have made uſe of them,) hath ever given ſo much credit or countenance to theſe Proceedings, as to take any notice of them. To make uſe of old Records or Precedents, the Grounds or Reaſons whereof cannot now be known, to ſubvert any Law or Government eſtabliſhed, is neither adviſable nor commendable. But for anſwer to them:

Reſp. As to that of 16 R. 2. that you ſee is grounded upon the Statute 28 E. 3. c. 10. and can ſignifie nothing to the preſent purpoſe, for there, according to that Statute, they condemn the Mayor, Sheriffs, and Aldermen upon their Confeſſion, that they had miſgoverned the City. The Mayor and Sheriffs being committed to Priſons, and this done before Dukes and Earls, by ſpecial Commiſſion to that purpoſe appointed, and convicted by their confeſſion, for the firſt, ſecond, third Offenſe all at once, Is this of good Authority in Law? And for the others, that of E. 2. was before Juſtices in Eire at the Tower, the Office of Mayoralty ſeiſed into the King's hands, and replevied from year to year. And that Seiſure that was made by King E. 1. for what Reaſons or Grounds, or by what ſort of Proceedings, doth not appear; all that doth appear of it is, that de facto Cuſtodes and Mayors were put upon the City, but quo jure who can tell. We know theſe times were times of trouble, in the Barons Wars.

The Barons, Simon Mountford, Earl of Leiceſter, being their General, fought a Battel with the King at Lewes, and took the King and Prince Edward the firſt both Priſoners. 48 H. 3.

The Barons differing among themſelves, and the Earl of Glouceſter joined with the Prince, who 49 H. 3.

got

got out of Prison, another Battel was fought at Evisham, and the great Earl Mountford slain; and then at Winchester by Parliament all his Party and the Liberties of the City of London seised, and in such times as these, and which followed in E. 1. E. 2. and R. 2. it is not to be marvelled if there were many Seisures and Custodes put on the City, 'tis more a marvel they were not destroyed. The Statutes made in these times, shew not only the Disorders, but that the Liberties were greatly Infringed, or else there would not have been Statutes to confirm them; whether the Infringing or Seising were the Cause or Effect, is hard to know; but just before in those times there were undoubtedly many extravagant Acts of all sides, which produced Magna Charta, made the 9 H. 3. for confirming of the Liberties and Privileges, not only of London, but of all other Towns: and after these times, in the three Reigns of the three succeeding Kings, how many other Statutes for confirming the Liberties and Privileges of the Cities and Towns were made 1 H. 4. cap. 15. The Penalties and Forfeitures imposed by the Statute 28 E. 3. cap. 10. upon the City of London put into the same Condition with other Cities and Boroughs as to Penalties and Seisures.

A Statute confirming to all the Cities and Boroughs, the Liberties and Franchises which they by former Grants or Confirmations had, viz. 4 H. 4. Cap. 1.

Confirmed in like manner, by 7 H. 4. Cap. 1.

Again confirmed in like manner, by 3 H. 5. Cap. 1.

Again confirmed by Statute of 2 H. 6. Cap. 1.

By which it appears what a sense and memory they had of the Seisures that had been of their Liberties and Privileges, that they never thought them sufficiently confirmed; but they were sufficiently confirmed; for from the time of R. 2. to this day we do not find any Seisure of any Liberties or Franchises, or Custos made or put upon them. That which was in those days of Violence done, shew them the worst of times, but are no Precedents for the best. But next,

Supposing and admitting these Records of these times of good Authority, and as authentick Precedents as can be, they are so far from proving against me, that I hope to make it most plainly to appear, that they are strong and plain Authorities and Evidence against them, and for me.

It is ordinary in Disputing or Arguing to lose the point disputed or argued. That I may not commit so great an Error, but may evince and make plain what I have affirmed,

Give me leave to look back to the Information and Replication, and from thence to make the Points that we argue single, clear and open.

The Information that saith that we usurp'd upon the King to be a Corporation and Body Politick, but in truth are none.

The Barr sets forth the title to be a Corporation by Prescription time out of mind.

The

The Replication that endeavours to avoid the Bar, by allowing that we were once a Corporation lawfully; but that by our Miſcarriages, we have forfeited our being a Corporation, and thereby became none, and after that uſurp'd to be one.

So that, that which the other ſide maintains, is, That by our miſdealances we have committed a Forfeiture of our old lawfull and rightfull Corporation. This I deny; the Affirmation is upon them to prove, and they producing no Record that expreſſes any ſuch Forfeiture of a Corporation, but only Records generally ſaying, that the Liberties ſhould be Forfeited or Seiſed, the queſtion is, what the meaning is in theſe old Records of Forfeiting and Seiſing Liberties. Mr. Attorney was pleaſed to take it, and ſo did Mr. Solicitor, as I think, that Forfeiting and Seiſing were much one. I ſhall not diſpute it; but whether in any of thoſe Records the Corporation or Body Politick were by theſe words taken to be forfeited. Mr. Attorney was ſo careſull to avoid the Conſequents of a Forfeiture of a Corporation, which are ſo great and deſtructive, that he would not by a Judgment in a Quo Warranto againſt a Corporation have the Corporation determined, no more than he would by the Forfeiture ipſo facto have it determined, but that there ſhould be ſome Seiſure into the King's hands; but what that is, or how to be underſtood, I cannot imagine. For if the Corporation be not to be diſſolved and determined, in whom ſhould it reſt or remain after ſuch Forfeitures, or during ſuch Seiſure, ſhall it after Forfeiture remain in the ſame Perſons that it was in, ſhall it ſubſiſt, live and act as before? or ſhall it be in limbo Patrum, or in Nubibus? Is a Corporation transferrable to any other Perſon or Perſons? Can a Corporation be conveyed or transferred? that is impoſſible; and ſo it appears in the Dean and Chapter of Norwich Caſe, and Fulcher and Heyward, and 1 Inſt. in the Caſe of the Homage Anceſtrall before cited. That a Corporation is not transferrable from one Body of Men to another; therefore the King cannot poſſibly have it, nor can he grant it. Ay, but ſaith Mr. Attorney, it ſhall be ſeiſed, and in the King's hands; what is meant by theſe words? How can it be in the King's hands, if not transferrable? Next, What ſhall the King doe with it, ſhall he grant it to others? No, that is impoſſible, by the Caſes cited, it ſo appears the King may make a new, but he cannot grant an old Corporation, becauſe not transferrable. Then if he cannot grant, if it be not transferrable, if a Corporation or Body Politick be by Law framed in ſimilitude of a natural Body, then it is no more transferrable than a natural Body is. The Body Politick cannot be taken out of the hands of the Perſons Incorporate. From hence then, if this be ſo, it will follow of neceſſity that the Corporation, if it cannot be transferred to the King, or by the King's Grant out of the Perſons in whom it is to others, it muſt remain where it is, or be diſſolved. Next, that which I ſhall ſhew is,

That by the words forfeiting and seising Liberties in those old Records, it cannot be meant forfeiting and seising a Corporation or Body Politick they still continued. But that which is the true sense of these words, Forfeiting and Seising Liberties in those Records was, if the abuse or misuse were of a particular Franchise, as of Courts, Prisons, Markets, or the like, the King had them forfeited to him. If the abuse were by a Corporation, they Acted by their active Parts, by their Mayors, Bailiffs, Sheriffs, Coroners, or the like; the King seised these Offices, turned the Corporation Officers out, and put others into their Places. This was the Course in the Eires, where these Seisures in those days usually were. But for seising Corporations as forfeit, there hath been no instance of it in any time, but the contrary is most evident. For the Corporations, notwithstanding the supposed Forfeitures or Seisures, remained still in being; and this is evident even to sense. The Seisures that have been mentioned, have been of London, Bristol, Gloceſter, Cambridge and Cinque-Ports, Ipswich and Wincheſter.

1. First. I offer to your Consideration, whether these Cities of London and Bristol, Gloceſter, Cambridge, and also the Cinque-Ports, ever since have not continually in all Pleadings, Claims and Titles, made themselves a Title by Prescription; Are they not by Prescription to this day? Do they not claim their Markets, Tolls, and all their Privileges by Prescription? Do not the Acts of Parliament that immediately follow these Seisures made by H. 4. H. 5. H. 6. in the times succeeding, all confirm their Privileges, not a word of granting new Privileges, but confirm the old; which shews plainly, that in those days the Corporations were not thought or imagined to be determin'd or dissolv'd.

By these Seisures or supposed Forfeitures, the enjoyment or possession for the space of three Hundred years, is evidence sufficient of their remaining and being Bodies Politick by Prescription, which they could not be, if they were forfeited as pretended. For by Forfeiture, they must mean the losing their Corporation, or being divested; no other sense can be, or ever was of Forfeiture; Could they forfeit them, and yet keep them? Could they lose them, and yet have them? if they could not, then 'tis plain that since they always have had them, they never forfeited or lost them. But for farther Evidence hereof, I shall make most plainly to appear, That during the very times of these Seisures, the Corporations remained and acted as Corporations; and that at that time, it was never thought or imagined that during the Seisures the Corporations were forfeit; all that was done was, that the Election of their Mayor, or of their Sheriff was de facto taken from them, and either a Custos, or a Mayor, by the King put over them, and continned till those Kings displeasures were over, and then they chose their own Officers again; But no thought then of forfeiting the Corporation. By the City Books, as well

as

as Records, this is moſt evident. The putting a Cuſtos by King E. 1. continued for the ſpace of Eleven years, from the 15 E. 1. to the 26 E. 1. and then they choſe their Mayor again. By the City Books it appears, that their Court of Huſtings all along continued, as at other times, Aldermen all along. Lib. A. fol. 50, 51. 135.

Radulphus de Sandwyco Cuſtos Civitat' London, Henricus le Walleys, and others, Aldermen (naming them) & univerſales Communia ejuſdem Civitatis, make a Conveyance of an Houſe to John de Bangwell. 18 E. 1.

The Court of Aldermen holden before the Cuſtos and Aldermen. 18 E. 1. Lib. A. fol. 110.

With the King's Remembrancer in the Exchequer, Cives London venerunt coram Baronibus & preſentaverunt Johannem de Canluar' & Willielmum de Betoyne ad reſpondend' pro Civitat' predict' & Com' Middleſex, de his quæ ad Officium Vicecomitis pertinent, & ad hoc faciend' preſtiterunt Sacramentum. 16 E. 1. r. 1.

Ibidem, The Preſentment and Swearing two other Sheriffs. 18 E. 1. Ro. 1.

Ibidem, The like. 21 E. 1. Ro. 3.

Ibidem, The like. 23 E. 3. Ro. 3.

Auby le Artheir attachiatus fuit ad reſpond' Communitat' Civitat' London' de placito, for that he, being no Freeman, Merchandized in the City. 21 E. 1. Lib. C. fol. 19. b.

Another like Suit againſt an Un-freeman. Lib. C. fol. 7. b

A Writ of Right in the Huſtings, brought by the Corporation. Communitas Civitat' London per Radulphum Pecocks Attornatum ſuum petit verſus Hugonem Epiſcopum de Bedlam unum Meſſuagium, &c. 22 E. 1.

All the Aldermen, and twelve Citizens were called before the King and his Council, and the King reſtored them the Election of their Mayor, and they choſe Henry de Gabeys Mayor. And on Monday following comes the King's Writ, whereby the King for good Services, Reddidimus & Reſtituimus Civibus London Civitatem una cum Majoritate & libertatibus ſuis quas certis de cauſis dudum capi fecimus in manum noſtrum. So that hereby it moſt evidently appears, the Corporation was not forfeit, loſt, or diſſolved, only a Cuſtos put over them which acted in the place of Mayor; and when removed, they choſe their Mayor again. 26 E. 1. Lib. B. fol. 38.

The Liberties not forfeit, only ſeiſed into the Kings hands; ſo ſaith the Writ dudum capi fecimus in manum noſtrum. The Record of Cambridge I have looked upon, It plainly appears in it, that the Corporation was not forfeited and diſſolved, as you ſuppoſe. For it appears, that when they ſubmitted to the King to doe with their Franchiſes what he pleaſed; yet it was ſalvo to the Mayor and Bayliffs, their reſponſe to all other Matters. And afterwards, at the ſame time, the King grants to the ſame

Mayor and Bayliffs divers Liberties, by which it appears that the Corporation was not forfeit, but ſtill in being, notwithſtanding the Seiſure and Forfeiture.

14 E. 2. The Seiſure that was by King Edward the Second, was in no ſort any Forfeiture or Determination of their Corporation; but either under a Cuſtos, or under a Mayor put in by the King.

Lib. E. fol. 11. b The Cuſtos, Aldermen, and Commonalty appeared, and turned out ſome of their Aldermen.

Lib. D. fol. 6. They choſe and ſwore their Sheriffs, and by this time they had a Mayor again; but the Office of Mayoralty, granted them by the King.

16 E. 2. Lib. E. fol. 146. The King grants to Nicholas de Farringdon, the Office of Mayor quamdiu nobis placuerit.

20 E. 2. They had a Writ reſtoring to them the Office of their Mayor again.

16 R. 2. Then for the Seiſure of R. 2. that continued but from the 22d of July unto the 19th of September following; and the form or colour of Law that they had for that, was the

28 E. 3. Statute of Edward the Third; and the Cuſtos put in ſworn at Guildhall, and took the Oath of the

Lib. H. 269. b. 16 R. 2. Mayor, as appears in the Book which I cited; where it is mentioned to be upon that Statute.

But for farther Evidence,

4 E. 3. rot. 2. In the Treaſurer's Remembrancers Office in the Exchequer, in Bago de Quo Warranto in Itinere Northampton & Bedford, Quo Warranto verſus Villam de Bedford; in that Record are theſe things: First, That the Village of Bedford had not at the laſt preceding Eire made claim of divers Liberties, and thereupon in that Eire adjudged, quod omnes Libertates non clamat' capt' fuiſſent in manus Domini Regis, and had not been replevied, but Corporation not ſeiſed. Thereupon the Corporation offer a Fine of 8 Marks to the King, pro licentia clamandi their Liberties, and admitted to fine: But then it appeared, that the Mayor, and the Coroners had ſat in Judgment, and condemned men for Felonies committed out of the Juriſdiction; and thereupon

Conſideratum eſt, quod predict' Libertas de Infangtheiſe, & Officia Major', Ballivorum, & Coronatorum ejuſdem Ville capiant' in manus Domini Regis. Sed quia cætere Libertates & conſuetud' Ville predict' abſque Miniſtris pro communi Utilitate Populi ibidem nequeant conſervari, the Court puts Johannem de Tound Cuſtos, Johannem Wymound and Richardum Rounds Bailiffs, and Nicholas Aſtwood and William de Knight Coroners, who are all ſworn to execute thoſe Offices, and to anſwer the King the Profits.

Hereby

Hereby it appears, that the courſe was not to forfeit or diſſolve the Corporation. They never were ſo unreaſonable; for hereby all their Lands and Goods, and all the Debts owing by them, or to them, would all be loſt: All they did was, they put in Officers to preſerve the Corporations. So that I think there is nothing more plain, that though the Liberties were ſeiſed, and that Officers, Cuſtos, or Mayors, were put upon them; yet the Corporations, or Bodies Politick, or their Liberties, were not forfeit, or determined: If they had been either forfeited, or determined, could the Writs of Reſtitution have ſet them up again? The old could never be reſtored or ſet up again, but by Act of Parliament; they might have had new Charters, and have been made new Corporations, but the old could never have been reſtored, if once forfeited, as now imagined. So that the Point betwixt us is, Whether the Records of E. 1. E. 2. and R. 2. of Forfeitures and Seiſures of Liberties, ſuppoſing the Cauſes or Offences for which they were ſeiſed were very great and provoking, as in all probability they were, do prove that thereby the Corporations were forfeit, diſſolved, or determined? It appears they were not forfeit. You can never avoid it. If abuſing the Franchiſe or Liberty of being a Corporation be a Forfeiture, as you affirm, and that they were ſeiſed for being forfeit; then the Offences that were committed by theſe Corporations in thoſe Princes times, were Forfeitures, and conſequently the Seiſures diſſolved the Corporations. They could not forfeit and loſe their Corporations, and yet keep them. And that they ſtill had their Being, is moſt evident by the Records of thoſe times, ſhewing, that they acted, and enjoyed their Corporations under thoſe Seiſures, only a Cuſtos inſtead of a Mayor, all other things the ſame. That they have in all Ages ever ſince been allowed to be Corporations by Preſcription, never denied or queſtioned. That the Acts of Parliament immediately following, confirming their Privileges, never queſtioned their having them. Never any thoughts of making void any Forfeitures by theſe Acts, or any new Grants, but always pleaded by Preſcription. Theſe things plainly ſhew, that the Offences committed in thoſe times did not forfeit the Corporation; and all that dark Authority they have out of thoſe Records is directly againſt them, proves only that theſe Abuſes gave only Cauſe of Seiſure of ſome Offices, but no Forfeiture of the Corporation, that ſtill continued.

Having thus anſwered thoſe old Records, and ſhewn that they are of Authority for me againſt them. And ſince it hath been ſtirred in this Caſe, whether a Corporation, or Body Politick be ſurrenderable or not? And inſiſted upon by the other ſide that it is, and from thence an Argument drawn to prove, that if ſurrenderable, 'tis forfeitable. Whether it be ſurrenderable or not, perhaps is alſo doubtfull, that I think a man cannot argue from it any thing. Firſt I am ſure there is no great reaſon why it ſhould be; for ſince that men that are of the Corporation take upon

on

on their coming to be free an Oath to preserve the Rights, Liberties, and Privileges of it; and since the Active Members are intrusted for all the other Members that elect and chose them, and also for their Successors; I cannot see how a man can satisfie himself in so doing.

Rep. 11. 98. Sr. James Baggs Case; They forfeit their Freedom by doing contrary to their Oath and Trust.

If every Freeman by his Oath and Trust be obliged to seek the Benefit of the Corporation, to surrender is against the Oath. The Law seems to have a care of preserving Corporations, and therefore provides that the taking any new Charter, though there be many Alterations in Offices and Names, yet doth not surrender the old. But were it of any other Franchise, the taking anew of the same thing is a Surrender of the old.

Dean and Chapter of Norwich Case, Rep. 3. 73.

Jones, 266. Fulcher and Heyward's Case seems a strong Case to prove it not surrenderable. And though the Bishop did not in that Case joyn in the Surrender, that cannot hinder; because the Bishop is no part of the Corporation, and therefore cannot hinder them to surrender if they will.

4 H. 26. 22. b A Will Incorporate, by the name of Bayliffs: The King de nova Incorporates them by the name of Sheriffs; Are their Privileges that they before had gone? no Dieu defend, saith the Book. But this being not my question, I intend not to debate it throughly, but to keep to the point of a Forfeiture of a Body Politick or Corporation, and farther to examine the reasonableness and justice of this Doctrine of Forfeiture, and see how adequate and just it is; for that is the thing, I perceive desired.

1. First, Their Position is, That a Corporation or being of a Body Politick, is a Liberty or Franchise, and if abused or misused, is forfeited, determined and dissolved.

That I may a little understand this Position, and consider of Abuse and Misuse, and of the extents and consequences of it. By Abuse or Misuse, every Act that a Corporation doth, that is not justifiable by Law, is, as I take it, an Abuser or Misuser. If a Corporation receive any Money that is not due to them, if it be by virtue of any By-Law, that is a Forfeiture, though it be but a Groat. What if they by their Common Seal command their Servant to enter into such Lands, or Distrein such a man's Cattle for Rent not due; Is not this a taking upon them to oppress the King's Subjects, and to extort from them their Lands or Moneys where not due? this is a Misuser. A Body Politick, as I have said, is but a Person created in resemblance of a natural Person, to have a Capacity to take, hold, and enjoy to particular ends and purposes. And hold or enjoy is not possible, without acting; and all that Act must of necessity be subject to

Errors

Errors ſometimes, in their actions as natural Perſons are. And muſt it be ſo penal to them that every Error, Miſuſer or Abuſer, muſt be a Forfeiture? Can it be reaſonable or juſt in Law that this can be? Laws are made for Preſervation, not for Deſtruction; if every Abuſer or Miſuſer forfeit, be it a ſmall Tranſgreſſion, is it either reaſonable or probable that any Law ſhall puniſh it with deſtruction of the Body? The greateſt Offence, be it Treaſon or Rebellion, or the leaſt illegal Act, Offence, or Miſdemeanour, muſt have the ſame meaſure of Puniſhment by this Rule, and the Law then doth not diſtinguiſh. If a natural Body, or Perſon, hath a Market and orders his Servants to take ſuch Tolls, and he takes them; What would this Crime be, beſides Forfeiture of his Market? Why ſhould a Corporation then not only in ſuch Caſe, or for any Offence or Miſcarriage to the value of a Peny, forfeit and loſe, as in the Caſe of High Treaſon, his Life or Being, Lands, Goods and all? This cannot be agreeable to any Rules or Reaſon of our Law; and therefore I take it, it cannot be the Law. The next thing is the Miſchiefs and Inconveniences.

2. The Miſchiefs and Inconveniences that muſt attend this Doctrine or Law of Forfeiting and Surrendring, if the Law be ſo.

1. Firſt, Let us conſider, whether this at one ſtroke do not make all the Corporations in England, of all ſorts, forfeit at once, and perhaps many years ſince. Is there any Corporation in England that hath not Offended or Tranſgreſſed? all manner of Corporations fall under this Rule. If they have tranſgreſſed or done any ſuch Act as makes a Forfeiture, (as every miſcarriage, for any thing I can ſee to the contrary, doth,) whether the Corporation be ipſo facto diſſolved by the Offence committed, or elſe by the Judgment, which muſt relate to the Offence, to avoid all mean Acts done by the Corporation. All that they have done ſince ſuch Miſcarriage they have done without right; and all that they think they have a Title to as a Corporation, they are miſtaken in, they have none. Perhaps if a Parliament ſhould be called, thoſe forfeited Corporations can lawfully ſend no Burgeſſes. I do not know whether I am miſtaken or not, I only offer this to Conſideration amongſt others: As, give me leave to venture a little farther upon theſe Conſiderations of Surrenders and Forfeitures of Corporations. Can a Biſhop, Dean and Chapter, Prebendary, Parſon, &c. ſurrender his Corporation or Body Politick? If they can, moſt of them, perhaps, are of the foundation of the Crown, and had their Lands from thence. We have many Statutes made to reſtrain their Alienations: Thoſe of Queen Elizabeth did not extend to hinder their Alienations to the Crown; but perhaps, out of hope of Preferment, they alienes to the Crown till the Statute of 1 Jacobi cap. 3. took

took away that Power also of conveying to the Crown: Can these forfeit the Corporations? Perhaps we are Sinners all, or at least as the ballance at some time or other may be holden, may be found too light; we are upon a point that goes to posterity, fear, and favour; what may it doe, and what may it not doe? If they may surrender a forfeit, what effects may this have upon the whole Ecclesiastical Estate? If this had been known in the days of King Henry the Eighth, perhaps there would have been no great need of Acts of Parliament to make him Head of the Church, or to have dissolved the Monasteries. Suppose that Colleges, Hospitals, and other Corporations founded for Charity, can surrender or forfeit; the present Masters and Fellows, and the Heirs of the Donors may truck; what effect may this have upon them? what ways may they find out? Also Cities and Boroughs; what Divisions and Contentions hath it already produced, some for surrendring, others for defending what Animosities are about it? The end of the Law is to preserve Peace and Quiet. Divisions and Dissentions frequently end in the Destruction of both Parties. The Citizens and Burgesses are, I think, three parts of four of the House of Commons. It is considerable what Effects this may have in Parliaments, our Laws and Posterities perhaps not a little concerned herein; and if so, surely this is a great Case. But if only the City of London, give me leave to see what the ill Consequences and Mischiefs will be. Arguments from Mischiefs and Inconveniences are forcible Arguments in Law.

Inst. 1. 11. 60. So saith Littleton, and my Lord Cook upon Littleton; and men must be desperate and sensual that despise future Mischiefs and Inconveniences, and many other places there cited. First, all their Lands will be gone and revert to the Donors, and their Heirs.

Jones, 190. F. N. B. 33. k. Inst. 1. 13. b. By Dissolutions of Corporations, all their Privileges are gone, and their Lands revert to their Donors, or Lords of whom they were holden. Secondly, All their Markets, Tolls, and Duties that they claim by Prescription; whereby the Government, and the Honour of the City, the Publick Halls, Gates, Prisons, Bridges, and other Edifices, are in a great measure maintained. Thirdly, All the Debts owing to the City, and all their personal Estate by the death or dissolution of the Corporation will be gone, but who shall have them? perhaps, non definitur in jure. Fourthly, all the Liberties and customary Privileges that the Freemen of the City, their Widows, and Children claim, (viz.) to have customary shares in their Husbands or Fathers Estates. To be exempt from Tolls in other Towns, Ports and Markets; to exclude Foreigners and Unfreemen from using their Trades in London, and many others. Fifthly, All the Acts of Parliament that give particular Powers and Authorities to the Lord Mayor, and Aldermen, or Common Council, or Corporation respecting either

either the Government or Juſtice of the City; as about Miniſters, and payment of their Dues, Buildings, Paving of Streets, Sewers, Enſurance Office, and many others. Sirthly, What ſhall become of the Orphans, and all the Moneys and Debts the City owes, and all the Charities in the City? We have ſeen the City burnt, and may remember what a Swarm were unhived thereby; but we never yet ſaw it diſſolved, nor are the conſequences meaſurable. And though it pleaſe his Majeſty upon the Diſſolution of this to grant a new Charter, yet it will be impoſſible any of theſe things can be preſerved: Their Lands, Eſtates, Debts, Privileges, Cuſtoms, are all perſonal, and annexed to the Corporation, and muſt live and dye with it; the ſaid Acts of Parliament are all fixed to this Corporation, and ſo are the Charities, and cannot, as I conceive, be ever transferred to any other to be new created. A new Corporation can be in no ſucceſſion or privity with the old.

If a Body Politick be once diſſolved, though a new one be founded of the ſame Name, that can have no ſucceſſion to the old, nor come in privity to it: Therefore is it that in the Dean and Chapter of Norwich Caſe, and in Fulcher and Heyward's Caſe, the Preſervation of the old Corporation is inſiſted on. If every Abuſer committed by a Corporation, be a Forfeiture, Determination, or Diſſolution, Is there any one in England not forfeited and diſſolved? Abuſe is a word of wonderfull large ſenſe; when the Law ſpeaks of a Franchiſe abuſed or miſuſed, it is applicable to a particular Franchiſe, as to a Market, Court, or the like, and if that Franchiſe be miſuſed or abuſed, in Oppreſſion or miſuſe, contrary to the ends of it, ſome certainty there is in it: But the Abuſe of a Corporation extends to all its Acts, and all Eſtates of the Corporation, and all the Privileges of all the particular Perſons, and all that are concerned in them, are ſufferers for every Abuſe, or Miſuſe, or Mil-act, or Treſpaſs, how ſmall ſoever. Who can tell in the Actions of a Perſon what may be taken to be ill or illegally done, or an Abuſe? Who will truſt a Corporation, if its Duration and Exiſtence be ſo fickle and infirm, that every Abuſer or Miſurer ſhall forfeit it? There will be no need of Officers to be amoved, thereby to determine this Corporation at will and Pleaſure, this Poſition contains enough to doe all. Theſe great conſequences attending this Doctrine of Forfeiture, are Reaſons to prove the Law otherwiſe.

Inſt. 1. 102. b

Obj. But, ſaith Mr. Attorney, (if I underſtand him,) we do not intend to deſtroy the Corporation, though we ſay in our Pleading that you have forfeited your old Corporation, that you have without any lawfull Authority uſurped upon the King, and pray in our Replication, that de Libertate Privilegio & Franchefia illa, (viz. the being a Corporation,) abindicantur & excludentur. Theſe are but words of

form, we only will lay the King's hands gently upon it, and ſeiſe it, but the Corporation ſhall not be deſtroyed or diſſolved.

Reſp. This is wonderfull, and a great Compliment to the City, as I take it; let us not flatter or deceive one another. We are not now in the ſeregular days in the Records mentioned, nor in ſuch ſort of Proceedings as in thoſe diſtracted times. Let us not go by blind conjectures, out of old Records, and bring in unknown ways. We are now in a Quo Warranto, which, as Mr. Attorney truly ſaith, is in the nature of a Writ of Right; and a Writ of right is the higheſt Writ that is in the Law, and the Judgment therein, and in this Quo Warranto muſt be concluſive to all Parties. If given againſt the Defendants, it muſt conclude them for ever, and diſſolve their Corporation, and if given againſt the King, he ſhall never hereafter bring it in queſtion for any cauſe precedent. Cook's Entries 527. D. hath a Precedent of it, Conſideratum eſt, quod the Defendant de & in Libertatibus, Privilegiis & Franchesiis pred. in Informatione predict' ſpecificat' nullo modo ſe intromittat, ſed ab iiſdem penitus excludatur. The like againſt Ferrers, and the Virginia Company, and many others may be found. The Court cannot alter the Judgment, it will be erroneous if they doe. And to talk of a Judgment of a Seiſure, what is the meaning of it, or ſuch Judgment? Is it final or not final? The Court muſt give a final Judgment, that the Party, if he think fit, may have his Writ of Errour. The Court will not take any of your old Records to go by, if any ſuch to be found, that would warrant any other Judgment: Therefore a Seiſure, without ſuch a Judgment that determines the Corporation, cannot be any way brought to paſs, as I believe, nor can I underſtand in whom, by your Seiſure, you would have the old Corporation to ſubſiſt. Transferred from the Perſons in whom it now ſubſiſts I think is impoſſible, but diſſolved by your Judgment it may be: And I hope your Lordſhip will not be induced by ſingular unwarrantable Things. That a Judgment ſhould be given that ſhall neither diſſolve the Corporation, nor continue it, that ſhall neither be for Plaintiff nor Defendant, that ſhall leave the Corporation neither alive nor dead, but in Tranſitu, or Limbo Patrum: A Judgment

Rep. 9. 28.
Inſt. 2. 282, 495.

M. 21 Jac. r. 9.

Quod capiantur, or quod Libertates & Franchesii pred & ſeiſiantur in manus Domini Regis.

Was there ever any the like? What ſhall be underſtood by it? Shall we be afterwards a Corporation? Shall our Magiſtrate continue? Shall we have our Lands, Markets, Tolls, Cuſtoms, or Franchiſes, or not? Or ſhall we be none, and yet not diſſolved? I muſt confeſs I am confounded in theſe Notions.

Next,

Next, As to the Authorities in Law for me:

1. I take it to be a great Authority for me, that there is no Precedent, or Judgment, or Book Case, produced or found, that ever a Corporation was forfeited. It lyes upon the other ſide to produce it, or ſhew it, and no doubt they would, if there had bin any, but there is none by the Authorities they cite; you may eaſily perceive, any ſort would not be omitted.

2. The Nature of a Corporation, as our Books do deſcribe it, ſhews it not forfeitable. I take it plain out of the Case of Sutton's Hoſpital, and the other Books there cited. A Corporation aggregate is Inviſible, Immortal, and reſts only in Intendment and Conſideration of Law, cannot commit Treaſon or Felony, be Out-lawed, Excommunicate, hath no Soul, cannot appear in Perſon, cannot doe Fealty, cannot be Impriſoned, not ſubject to Imbecility or Death. They cannot commit any actual Treſpaſs or Diſſeiſin, except under their common Seal, by command precedent, or aſſent ſubſequent; when our Books ſay, that they are a Body Politick, and reſt or have their being in Intendment or Conſideration of Law; thereby is meant, that that they are by Law enabled to Act to particular ends and intents, anſwerable to their ends and creations. Their ends or creations are only to be ſubſervient to the publick Good, and Government and Preſervation of the City or Town Incorporate, of the Members thereof. And if there be any Act done by the Members that are the active part of ſuch Corporation, to any other intent, end, or purpoſe: This, not the Act of the Corporation, but of the particular Members, and they only anſwerable for it. And as to particular Offences and Miſcarriages in this Caſe alleadged, it cannot be denied, but that the particular Members are anſwerable for it; and if they, then according to all Books, they ought not to be doubly chargeable or anſwerable in both Capacities. And the Caſe cited out of Bagg's Caſe, of a Freeman convict of Perjury, and thereupon Diſfranchiſed, doth not prove that they ſhall be puniſhed in a double Capacity, for the Corporation is not thereby puniſhed, but preſerved. The being of a Body Politick, is only a Capacity, and in reſemblance of a natural Body, and no more forfeitable than a natural Body. It is ſeiſing & forfeiting of Liberties that we meet with, that is ſuch as are generally ſpoken of; as Markets, Courts, Juriſdictions, and the like: And in the old Records, by ſeiſing the Liberties of a Corporation, is meant, the taking from them their Officers, and putting in others upon them for a time. But a forfeiting, diſſolving, and determining the Body Politick, never was yet done or known, nor, as reaſonable to believe, ever entred into any mans thoughts till now; for I have already ſhewn, that Offences and Miſcarriages that were committed by the Corporations in thoſe troubleſome Times of E. 1. E. 2. and R. 2. for which their Liberties were ſeiſed, were not Forfeitures and Determinations of

Rep. 10. 92. b. 21 E. 4. 72.

Br. Corp. 24. 34.

those Corporations, they all remain Corporations by Prescription to this day: And I have also taken notice, that the Acts of Parliament that were made in the succeeding Kings Reigns, of H. 4. H. 5. and H. 6. are only Acts of Confirmation to the Cities and Boroughs, of the Liberties and Privileges. From that time till within these three years, I believe it never entred into any mans thoughts that a Corporation was forfeitable; for farther proof whereof, divers other Statutes, and the whole series of matter is Argument.

15 H. 6. cap. 6. The Statute of H. 6. that provides against Abuses and Exactions made by Societies Incorporate by their By-Laws and Ordinances, and appoints a Forfeiture of ten Pounds, and of their power to make By-Laws. To what end should this be, if the Corporations themselves were forfeited, or thought so to be.

19 H. 7. cap. 7. The Statute of H. 7. recites the Statute of H. 6. and the Exactions and Abuses by Fellowships, by their By-Laws and Ordinances, and Ordinances, and appoints a Penalty of forty Pounds upon a they exact Money by an unlawfull and unwarranted By-Law, not examined and signed by the Chancellor and Chief Justice.

12 H. 7. cap. 6. The Statute of the 12 H. 7. cap. 6. sets forth grievous Exactions by the Fellowship of Merchant Adventurers, by their By-Laws, and imposeth a Penalty for the future.

The Statutes 22 H. 8. 4. 28 H. 8. 5. shew like Exactions by Corporations upon Apprentices by their Ordinances and By-Laws, provides Remedy, and enacts Penalty. If in those times it had bèn thought or imagined that a Corporation had been forfeitable, every of these Offences forfeited it, what need farther Remedy. In the Case of Hoddy and Wheehouse, of excessive Toll by the Town of Northampton.

Moor. 474. 39 Eliz. Palmer. 77. In the Quo Warranto against a Corporation, though the Question was concerning their taking Toll, and whether they had forfeit their Market, or only their Toll, no thought of forfeiting their Corporation ever mentioned.

So that I think I may conclude with the tumultuous times of E. 1. E. 2. and R. 2. what was then done, doth plainly shew the Corporations were not forfeit or dissolved. That by all the Acts of Parliament, and Proceedings in almost all the Reigns of any length or duration, from that time to this very Case, the Opinions and Thoughts of men were otherwise; as by the Statutes and Translactions appears, Not one Opinion, Book, or Authority produced, or to be found.

The great Concern not only of this great City, but of all other Cities, Towns, and Corporations Ecclesiastical and Temporal, all depend upon it. And which is more than all, the very Government by Law Established, will be in great danger of Alteration by it.

I have argued long, and tryed your Lordſhips patience; the weight and length of the Caſe, and rareneſs of the matter, there never having been the like before in any Age, will, I hope, excuſe me. But beſides the whole frame and foundation that the other ſide have laid, being all built upon general undigeſted Notions, as I take it, viz. That Abuſer and Miſuſer of Liberties forfeits them, without diſtinguiſhing betwixt one thing and another. That the words Forfeiting and Seiſing Liberties, found in old Records, ſhould be Authorities to prove forfeiting Corporations or Beings of the Body Politick, though no ſuch thing then, or at any time ſince, till very lately, ever thought on or imagined. It was neceſſary for me to open and ſet forth theſe general notions, and to explain and diſtinguiſh; which, I hope I have done, that it may appear what the ſenſe of them is, how far they agree with Law and Juſtice, and how far not. And if in the doing hereof, or the ſetting out the repugnant or inconſiſtent Matters or Opinions ariſing in this Caſe to maintain this Quo Warranto, I have expreſſed my ſelf in any other manner than became me, I humbly beg pardon for it; and that it may not reflect upon the Cauſe, nor prejudice it.

Upon the whole Matter,

If this Information brought againſt the Body Politick for Uſurping to be a Body Politick, ought to have been brought againſt the particular Perſons.

If it be repugnant or contradictory, that a Corporation can uſurp to be a Corporation; that a Body Politick or Being can uſurp to be a Body Politick or Being, before it had a Being, or to be that ſame Body Politick or Being, which it was when it did uſurp.

If forfeiting a Franchiſe, or Liberty, or other Eſtate, cannot determine or veſt that Franchiſe or Eſtate in the King till the Forfeiture appear on Record. Then the old Corporation ſuppoſed to be forfeited, if it were ſo, did notwithſtanding, and yet doth continue in being, there being no Record to determine it; and conſequently that which is pretended a new one by Uſurpation is impoſſible.

If by Seiſure into the King's hands (as pretended) the Continuance of the Corporation be intended; How inconſiſtent is it with Law or Juſtice to continue any thing in the King that is wrongfully uſurp'd, and the Parties to be puniſhed, fined, and committed for uſurping.

If Mr. Attorney's Replication taking iſſue upon our Preſcription to be a Corporation, and going over and alleadging ſeveral diſtinct Cauſes of Forfeitures, cannot by Law be maintained; and in the Example doth introduce a way to bring all mens Eſtates ſubject to Mr. Attorneys will and pleaſure. For, let any mans Right be as good as can be, it will be ſcarce poſſible to defend it, if ſuch Pleadings as in his Replication be allowable by Law.

Then be the matter in Law as much againſt us as poſſible; yet Mr. Attorney can have no Judgment for him upon this Information.

Next,

Next, Supposing the Information all good in Law. Yet,

If the Judgments, Records, and Authority that have been cited by them for Seisures, do plainly shew that Seisures and Forfeitures are very different in their Natures. That the Corporations all continued notwithstanding the Seisures: And the Seisure was only the Kings putting in Mayors and Officers to act in them instead of the others Elected or Constituted by the Corporation, and they remain Corporations by Prescription to this day, and never were forfeited, dissolved, or determined by such Seisures.

If the General Authorities in Books that the Wilfuling or Abusing a Franchise be truly applicable to Franchises (that are Estates and Interests grantable or conveyable from man to man) and never were intended of such a thing as is rather a Capacity or Being, than a Franchise.

If there be no Case, or Precedent, or Opinion to be found for it. If of the contrary, the particular Cases cited prove, that where the Corporations have by Miscarriages forfeited particular Franchises, they do not forfeit their Corporations. If there be scarce any Corporation in England, that have not at some time or other done something they should not, or omitted to do something they should, and thereby forfeited their Corporation, and consequently all are Usurpers, and their Corporate Acts since done all void.

If the Corporation here hath done nothing, but that the Mayor, Aldermen, and Common Council, are only Delegates, Deputies, or Ministers of the Corporation for particular purposes.

If Servants, Deputies, or Delegates, doe that which they have no Authority to doe, they must answer for it in their own Persons; but their Masters, or those that deputed or delegated them for another purpose, they are innocent; they shall not suffer by it, though no Acts of Parliament had been in the Case.

If the Acts of Parliament against Seising the Liberties of the City, for, or by reason of any miscarriage of their Officers or Ministers, extend to these Acts of the Mayor, Aldermen, and Common Council.

If so be that these Acts were the Acts of the Corporation; Yet with Submission, if they have shewn a good and legal Right by their Custom and Title, to make By-Laws for regulating and settling the Markets and Tolls, and that which they have done be as pleaded reasonable, and that there was reasonable Ground at that time for their Petition which they have set forth.

If all these particulars that I have now summ'd up be against me, then Judgment must be against me; though I know not what that Judgment can be.

But if any one of these particulars, thus repeated, be for me, and against Mr. Attorney; then Mr. Attorney can have no Judgment against the City; But Judgment must be for them. Which I humbly pray.

The

The next Term, viz. Trin. 35 C. 2. Ch. Juſt. Saunders dying the day of the Judgment given, or the next day after, Mr. Juſt. Jones, Juſt. Raymond, and Juſt. Withens, being in Court, Juſt. Jones pronounced the Judgment of the Court, and Juſt. Raymond, and Juſt. Withens affirmed, that Ch. Juſt. Saunders was of the ſame Opinion with them, and that they all agreed,

1. That a Corporation aggregate might be ſeiſed.

That the Stat. 28 E. 3. c. 10. is expreſs, that the Franchiſes and Liberties of the City, upon ſuch Defaults, ſhall be taken into the King's hands.

And that Bodies Politick may offend and be pardoned, appears by the general Article of Pardon, 12 C. 2. whereby Corporations are pardoned all Crimes and Offences.

And the Act for regulating Corporations, 13 C. 2. which provides that no Corporation ſhall be avoided for any thing by them miſ-done or omitted to be done, ſhews alſo that their Charters may be avoided for things by them miſ-done, or omitted to be done.

2. That exacting and taking Money by the pretended By-Law, was Extortion, and a Forfeiture of the Franchiſe of being a Corporation.

3. That the Petition was ſcandalous and libellous, and the making and publiſhing it a Forfeiture.

4. That the Act of the Common Council was the Act of the Corporation.

5. That the Matter ſet forth in the Record did not excuſe or avoid thoſe Forfeitures ſet forth in the Replication.

6. That the Information was well founded. And

Gave Judgment that the Franchiſe ſhould be ſeiſed into the King's hands, but the Entry thereof reſpited till the King's Pleaſure was known in it. Juſt. Raymond and Juſt. Withens declare, that they were of the ſame Opinions in omnibus.

And accordingly after Entry made by Mr. Attorney,

That as to the Iſſue joined to be tried by the Countrey.

As to the claiming to have and conſtitute Sheriffs.

As to the having the Mayor and Aldermen to be Juſtices of the Peace, and to hold Seſſions, quod ipſe pro Domino Rege ulterius non vult proſequi.

Judgment is entred. Ideo conſideratum eſt quod prefat' Major & Communitas ac Cives Civitat' Lond' as to the Iſſue aforeſaid, betwixt our Lord the King and them joined, and as to the Liberties and Franchiſes aforeſaid by them claimed, to have and elect Sheriffs, and to have their Mayor and Aldermen to be Juſtices of the Peace, and hold Seſſions,

Eant inde ſine die ſalvo jure Dom. Regis, ſi al', &c.

Et quoad dictas ſeparales materias in lege unde tam pred' Att' Gen' quam pred' Major & Communitas & Cives Civitat' pred' poſuerunt ſe in Judicium Curiæ, the Court adviſe till Trinity Term, and then pro eo quod videtur Curiæ hic quod prefat' Major &

Com-

Communitas ac Cives Civitat' pred' forisfecerunt Domino Regi nunc Libertat' Privileg' & Franchef. pred' ob causas in Replicacon' prefat' Attorn' Gen' superius specificat' quod Placita prefat' Major' & Communitat' ac Civium Civitat' pred' superius rejungendo & repellando in ea parte placitat' materiaq; in iisd' content' minus sufficien' & invalid' in lege existunt ad precludend' dict' Dom' Reg' a Forisfactura pred' aut ad Major' & Communitat' ac Cives Civitat' pred' ad clamand' Libertat' Privileg' & Franchef. pred' sibi allocand' & adjudicand' manutenend' maturaq; deliberacione superinde prius habit'.

Considerat' est, qd' Libertat' Privileg' & Franchef. pred' fore de seipsis unum Corpus corporat' & Politic' in re facto & nomine per nomen Majoris Communitatis & Civium Civitat' Lond' ac per idem nomen placitare & implacitari, respondere & responderi per eosd' Majorem & Communitatem, ac Cives Civitat' London pred' superius clamat' capiantur & seisiantur in manus Domini Regis & quod prefat' Major & Communitas ac Cives Civitat' Lond' pred' capiantur ad satisfaciend' dict' Dom' Reg' de Fine suo pro Usurpatione Libertat' Privileg' & Franchef. predict'.

This Judgment reversed & ye City & London restored to its ancients Rights & privileges by ye 2 W. & M. Cap. 8.

2 Judgment & ye proceeding he declared arbitrary & illegal & ye Judgment agt ye City & Charter void.

Postscript.

Poſtſcript.

THE Queſtion concerning the Surrender of Corporations or Bodies Politick, not being directly in the Caſe, but in the Arguments on both ſides inſiſted on, it may not be unneceſſary to ſtate that Point, and collect what hath been in the Debates or Arguments alleadged on either ſide, that the eaſier View and Judgment may be made of it.

By Surrender in this Queſtion is by both ſides meant and intended, ſome Deed or Inſtrument in writing, whereby a Body Corporate or Politick can ſurrender and diſſolve it ſelf.

It is agreed that a Body Politick may be diſſolved, either by the Death of the Perſons incorporate, or their Refuſer to act, nominate, or elect Officers or Miniſters, ſo as there remain not ſufficient, authorized or enabled by their Charter or Conſtitution, to preſerve their Being: This is admitted to be a Ceſſer, or Diſſolution of the Corporation, and ſuch a ſort of yielding up, or Surrender, is admitted poſſible.

But whether by any Deed or Inſtrument in Writing it can be done, that is the Queſtion intended.

For the Surrender, It hath been alleadged,

1. That the Being of a Body Politick is a Liberty, Privilege, and Franchiſe, that had its Commencement by the King's Charter, or by Preſcription, which ſuppoſes a Charter; and if it have its beginning and Creation by Charter, which is the Kings Deed that grants it, by Deed again it may be regranted and ſurrendered.

And 'tis a Maxim in Law,

Unumquodque diſſolvi poteſt eod' modo quo ligatur.

And inſtances in Fairs, Markets, Leets, and ſuch like Franchiſes, granted by Charter, which, ſay they, may be ſurrendered by Deed, or Regrant.

2. That it is neceſſary that it ſhould be diſſolvable by Surrender, perhaps a Town may come to decay, and not be able to defray the charge that the Support and Maintainance of the Corporation may require; for every one ſees that Ornaments and Officers muſt be, and theſe cannot be bought, or maintained, without Eſtates, and poor men are not able, without ruine to their Families, to bear the Magiſtracies and Of-

fices; And therefore necessary there should be a Power in them to surrender.

3. That the Books and Cases in Law do prove, That a Corporation, or Body Politick, may surrender itself, and thereby be dissolved.

Dy. 273. There the Case is thus stated:

The Deanry of the Cathedral Church of Wells was dissolved by the Surrender of Fitz-Williams, tempore H. 8. And the Prebend of Currey, in the same Church, was also surrendered by Goodman, Prebendary there, 1 E. 6. And in this Year the Dissolution of the Deanry was confirmed, and the Deanry extinct by Act of Parliament, and a new Dean erected and created, to which new Deanry the Lands and Possessions of the old were annext, amongst other Possessions, and the Nomination of the new Dean and Successors, given by that Act to the King, and that he should have the same Power in Choro & Capitulo, as the old Dean had, saving to all Strangers, other than the Bishop of Bath and Wells, the old Dean, and the old Prebendary, and their Successors.

In this case 'tis admitted, and taken for granted, that the Deanry, and also the Prebend were surrendered.

Dy. 282. There the Archbishop of Dublin had two Chapters, viz. the Dean and Chapter of St. Patrick, and the Dean and Chapter of Christ-Church, and both these used to confirm the Bishops Leases. The Dean and Chapter of St. Patrick, by Deed under their common Seal, gave and surrendered all their Church, Houses, Lands, and Possessions, to the King, without license or consent of their Bishop, being their Ordinary, and Patron of the most part of the Prebends.

After this Surrender their Church was used as the Common Hall, for the four Courts in the Term there; and a Lease is made by the Archbishop, confirmed by the Dean and Chapter of Christ-Church only, and whether the Successor of the Archbishop were bound by this Lease, was the Question.

The Judges in Ireland were divided in Opinion, and thereupon the Case sent over for the Opinion of the Judges here, and the Opinions and Resolutions of five Justices, viz. Catlyn, Dyer, Saunders, Welsh, and Carus, certified to the Lord Deputy of Ireland, under their Hands, were, quod non fuit aliud Capitulum in esse tempore confirmationis Dimission' pred' nisi Christ-Church tantum, quia Corporatio & Capitulum Sancti Patrick fuit per donum & sursum reddition' Decani & Capituli pred' legitime dissolutum absque consensu Archiepiscopi.

Jones 168. The Opinion of Justice Jones there, That a Corporation may be dissolved by an Act proper, viz. by Resignation.

On the other side, it hath been answered,

1. Ad-

1. Admitting it to be true, that to be a Body Politick, is a Liberty, Privilege, and Franchiſe, created by Charter, which is the King's Deed.

Yet it doth not follow that it may be ſurrendered by Deed.

For the Charters that incorporate the Citizens, or Inhabitants, of ſuch a City, Town, or Place, and make them a Body capable of taking and having Lands, Goods, or Chattels, to ſue and to be ſued, and to have a Common Seal, and to act according to the Powers, Ends, and Purpoſes in their Charters contained, only give them a capacity for thoſe Ends.

The Liberty, Privilege, and Franchiſe that they have goes no farther.

They cannot transfer this Privilege, or Franchiſe, to any other Perſons.

Theſe are only perſonal Franchiſes or Capacities, fixed in the Perſons in whom they are granted.

Like to Patents of Denization granted to Aliens, whereby a capacity is granted to have, hold, and act, as a natural born Subject.

Grants of Enfranchiſing a Villain.

Theſe are Grants that cannot be ſurrendered.

Theſe are Franchiſes and Capacities like this.

Theſe are Exceptions to the General Rule,

Unumquodque diſſolvitur eodem modo, &c.

So alſo of Fairs, Markets, Courts, &c. They are created by Charter, they may be granted over, or granted to the King; but if they be regranted to the King, they are not extinct, but remain in the King.

Abbot of Strata Marcell's Caſe, Rep. 9. 25. b ſhews the difference thus:

When the King grants Franchiſes that were in the Crown before the Grant, as Bona Felonium, Deodands, Wreck, &c. and theſe come again to the Crown, they are merged in the Crown, and the King is ſeiſed of them jure Coronæ.

But when a Privilege, Liberty, Franchiſe or Juriſdiction, was at firſt erected or ordained by the King, there, by the coming of it again to the Crown, they are not extinct, and inſtanceth in Fairs, Markets, Hundreds, Leets, & ſimilia.

They are not diſſolv'd or gone, for thereby Subjects would be prejudiced: For if the Court ſhould be ſo granted, and thereby diſſolved, the Subjects Judgments and Suits in thoſe Courts would all be loſt.

Theſe are other Exceptions to that general Rule,

Unumquodq; &c.

2. That the Reaſon given for the Surrenders of Corporations from the poverty that may happen for the conveniency of ſome Corporation is anſwerable; for that doth not very frequently happen: But when it doth happen, if they are weary of it, they

may let it alone, and not act or chuse Officers, it will cease of it self, need not be at the charge or trouble of a Surrender.

But on the other side, the Inconveniences are very great, and are some of them before specified.

The Establishment of the Church is all in Corporations, Bishops, Deans, Chapters, Prebends, Parsons, Vicars; if these be surrenderable, as by the Cases cited, without consent of Bishops; (a Prebend is, as to his being, but as a Parson, or a Vicar.) The Universities, Colleges, Hospitals, all the Cities, considerable Towns, Trades, and Mysteries, are Corporations; if these be surrenderable, it affects our old Government.

3. As for the Books and Authorities. Dy. 273. the Dissolution of the Corporation thereby surrendred, is only mention'd in putting the Case, it is not debated, nor was it material in the Case: For the Act of Parliament there settled the new Dean and Chapter, and the Prebendary, and the matter of the Case ariseth upon the Deprivation of Dean Goodman, and the appeal and reversal of that Sentence, there is not as much as any Opinion in the Case concerning the Dissolution or Surrender, whether good or bad.

But what may reasonably be inferr'd from that Case is, That the Surrender and Dissolution thereby was not good in Law; for if it had, what needed the having an Act of Parliament to secure against the old Dean and Prebendary; which appears in the Case was had. And,

Co. Rep. 3. 75. b. in the Case of the Dean and Chapter of Norwich, This Case of Dyer is cited, and there expresly said, that that Surrender was not thought good, till confirm'd by Act of Parliament.

And as for the other Case, Dyer 282. of the Surrender of the Dean and Chapter of St. Patrick.

The Opinion of the Judges there given, is by all the Judges, 3 Car. 1. in the Case of Heyward and Fulcher, in Jones, 168. denied to be Law, and said to be a private resolution.

So that these two Cases in Dyer, having been by those later Authorities denied, remain no Authorities. And as for the other Authority, viz. The opinion of Justice Jones 168. that a Corporation may be dissolv'd by a proper Act, viz. by Resignation.

That is true; taken in the sense he speaks it, it is spoken of a Dean and Chapter resigning to the Ordinary, viz. The Dean resigning his place of Dean, and the Prebendaries of the Chapter, resigning their Prebends to the Ordinary; whereby their Churches and Prebends became void, and to be supplied by the respective Patron, collating or presenting, as in Cases of Resignation, by any Parson or Vicar to his Ordinary.

But this is nothing of a Surrender of the Body Politick to the King, and thereby dissolving the Corporation, and destroying all supply, by new Presentments or Collations.

And

And this appears by the very words of Juſtice Jones there; for when he ſaith they may be diſſolv'd by a proper Act, viz. by Reſignation; the next words are, or by death of the whole Corporation, and the King being Patron, 'tis in his Election whether he will collate de novo, or not, and till he collates the Corporation is in ſuſpenſe; but if the Biſhop be Patron, then the Biſhop upon the Reſignation, hath power to collate, and thereby to continue the Corporation: So that it is very plain, that the Reſignation he ſpeaks of, is not meant for any Surrender to the King, or any thing that determines the Corporation, except the Patron will not collate, and thereby ſuffer the Corporation to ceaſe.

But of the contrary, that a Corporation cannot be diſſolv'd by any Surrender.

The Suppreſſion and Diſſolution of the Abbies, Priories, and Monaſteries, by H. 8. was no Diſſolution of their Bodies Politick.

Br. Extinguiſhment, 75.

Br. Corporation, 78.

Davies, Rep. 1.

Moore's Rep. 282. Though their Houſes and all their Poſſeſſions were gone, and the Perſons either diſcharged of their Orders, or ſent into other Houſes; yet reſolved, that the Corporations remain'd. And it can ſcarce be imagin'd, but in ſome of thoſe Caſes it would have been practiſed, or at leaſt ſomething ſaid about ſurrendring their Body Politick, if it had been then thought ſurrenderable.

But the Caſes of the Dean and Chapter of Norwich, Rep. 3. 41 Eliz. before cited.

And the Caſe of Heyward and Fulcher before mention'd in 3 Car. 1.

Jones, 168.

Palm. Rep. 500, 501.

Anderſ. 2. 120.

Have been cited as Judgments againſt Surrenders by all the Judges of the King's Bench.

The Caſe was, That the Dean and Chapter of Norwich, 3 Junii 1 E. 6. ſurrendred to the King their Cathedral Church, & all their Mannors, Lands, Tenements, Hereditaments, Franchiſes and Liberties, Spiritual and Temporal, by whatſoever names they are known, or which they have or ought to have in the Right of their Church.

And by the Caſe 41 Eliz. Co. Rep. 3.74.

And the Opinion of all the Judges of the King's Bench.

3 Car. 1. adjudged that this was no Surrender of the Corporation.

Obj. That the words of the Surrender do not ſhew any intent to ſurrender the Corporation, but only the Poſſeſſions.

Reſp. The being of a Corporation, is a Franchiſe or Liberty.

And

And there is an express Surrender of all Franchises and Liberties Spiritual and Temporal, by what name soever known, which they have in the right of their Church.

And this was a Spiritual Franchise, which they had in right of their Church.

Next, This Surrender was made with intent to dissolve the Corporation, and to have a new one erected; this appears by the new Charter of Erection, made in November following; which recites the Surrender made to that intent.

It is not any where in the many Arguments of that Case, alleadged that there wanted words in the Surrender to doe it, which would have been, if that had been the Ground of their Judgment.

In the Case cited out of Dyer 282. there the words of the Surrender were, that they surrendered their Church, Houses, Lands, and Possessions, which are not half so large and ample words as in this Surrender are contain'd; and the other side cite that as an Authority to prove a Corporation surrender'd, and admit the words there sufficient, and deny them to be sufficient here, though much more large, express, and general.

The arguing there in Palmer 501. that it is against the Nature and Constitution of Corporations, that by the words put in their Charters, by their very Constitution are to have perpetual Succession, perpetuis temporibus duratur, and which by their Oaths they are sworn to preserve, that they should be felo de se.

And the express words of the Judges reported in these Books, shew their Opinion, that the Corporation could not be surrendred.

Jones, 168. Dodderidge Justice, there saith, that the Dean and Chapter cannot surrender their Corporation.

Palm. 501. Whitlock Inst. there saith, For that that the Dean and Chapter are Counsel to the Bishop instituted to that purpose, they cannot dissolve themselves, for the Politick Corporation is the Soul to the Body, that cannot be granted or sever'd; though the King can create a Corporation, he cannot dissolve it. And Jones Inst. there 502. saith, That the Dean and Chapter were Counsel to the Bishop, and cannot destroy themselves; if they could, great Inconvenience thereby will ensue to the Church.

FINIS.